

CODE OF CIVIL PROCEDURE

ACT V of 1908

WITH

*Exhaustive Tables of Contents, Two Copious
Indexes and other useful information*

AND SUPPLEMENTED BY

*The Amended Letters Patent, Indian High Courts
Act, Madras Civil Courts Act and Madras
City Civil Court Act*

BY

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THE CODE OF CIVIL PROCEDURE

BEING

ACT No. V. OF 1908.

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature ; It is hereby enacted as follows :—

PRELIMINARY.

1. Short title, commencement and extent.—

(1) This Act may be cited as the Code of Civil Procedure, 1908.

(2) It shall come into force on the first day of January, 1909.

(3) This section and sections 155 to 158 extend to the whole of British India : the rest of the Code extends to the whole of British India, except the Scheduled Districts.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(1) “ Code ” includes rules :

(2) “ decree ” means the formal expression of an adjudication which, so far as the Court expressing it, conclusively

determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final :

(3) “decree-holder” means any person in whose favour a decree has been passed or an order capable of execution has been made :

(4) “district” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”), and includes the local limits of the ordinary original civil jurisdiction of a High Court :

(5) “foreign Court” means a Court situate beyond the limits of British India which has no authority in British India and is not established or continued by the Governor General in Council :

(6) “foreign judgment” means the judgment of a foreign Court :

(7) “Government Pleader” includes any officer appointed by the Local Government to perform all or any of the functions expressly

imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader :

(8) " Judge " means the presiding officer of a Civil Court :

(9) " judgment " means the statement given by the Judge of the grounds of a decree or order :

(10) " judgment-debtor " means any person against whom a decree has been passed or an order capable of execution has been made :

(11) " legal representative " means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued :

(12) " mesne profits " of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession :

(13) " moveable property " includes growing crops :

(14) " order " means the formal expression of any decision of a Civil Court which is not a decree :

(15) " pleader " means any person entitled to appear and plead for another in Court, and

includes an advocate, a vakil and an attorney of a High Court :

(16) "prescribed" means prescribed by rules :

(17) "public officer" means a person falling under any of the following descriptions, namely :—

(a) every Judge ;

(b) every member of the Indian Civil Service

(c) every commissioned or gazetted officer in the military or naval forces of His Majesty, including His Majesty's Indian Marine Service, while serving under the Government ;

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorized by a Court of Justice to perform any of such duties ;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

- (f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;
- (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government ; and
- (h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty :
- (18) " rules " means rules and forms contained in the First Schedule or made under section 122 or section 125 : .
- (19) " share in a corporation " shall be deemed to include stock, debenture stock, debentures or bonds : and
- (20) " signed," save in the case of a judgment or decree, includes stamped.

3. Subordination of Courts.—For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

4. Savings.—(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

5. Application of the Code to Revenue Courts.—(1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as the Local

Government, with the sanction aforesaid, may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suit or proceedings as being suits or proceedings of a civil nature.

6. Pecuniary jurisdiction.—Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

7. Provincial Small Cause Courts.—The following provisions shall not extend to Courts constituted under the Provincial Small Causes Courts Act, 1887, (IX of 1887), or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say,—

(a) so much of the body of the Code as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes;

(ii) the execution of decrees in such suits;

the execution of decrees against immoveable property; and

- (b) the following sections, that is to say,—
section 9,
sections 91 and 92,
sections 94 and 95 so far as they
relate to injunctions and interlo-
cutory orders, and
sections 96 to 112 and 115.

8. Presidency Small Cause Courts.—Save as provided in sections 24, 38 to 41, 75, clauses (a), (b) and (c), 76, 77 and 155 to 158, and by the Presidency Small Cause Courts Act, 1882, (XV of 1882), the provisions in the body of this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

PART I.

SUITS IN GENERAL.

Jurisdiction of the Courts and Res Judicata.

9. Courts to try all civil suits unless barred.
—The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

10. Stay of suit.—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of British India established or continued by the Governor-General in Council and having like jurisdiction, or before His Majesty in Council.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from trying a suit founded on the same cause of action.

11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression “former suit” shall denote a suit, which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be deter-

mined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly, or impliedly by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

12. Bar to further suit.—Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

13. When foreign judgment not conclusive.—A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties un-

der whom they or any of them claim litigating under the same title except—

- (a) where it has not been pronounced by a Court of competent jurisdiction ;
- (b) where it has not been given on the merits of the case ;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of British India in cases in which such law is applicable ;
- (d) where the proceedings in which the judgment was obtained are opposed to natural justice ;
- (e) where it has been obtained by fraud ;
- (f) where it sustains a claim founded on a breach of any law in force in British India.

14. Presumption as to foreign judgments.—
The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record ; but such presumption may be displaced by proving want of jurisdiction.

Place of Suing.

15. Court in which suits to be instituted.—
Every suit shall be instituted in the Court of the lowest grade competent to try it.

16. Suits to be instituted where subject-matter situate.—Subject to the pecuniary or other limitations prescribed by any law, suits—

- (a) for the recovery of immoveable property with or without rent or profits,
- (b) for the partition of immoveable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,
- (d) for the determination of any other right to or interest in immoveable property,
- (e) for compensation for wrong to immoveable property,
- (f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate :

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section “property” means property situate in British India.

17. Suits for immoveable property situate within jurisdiction of different Courts.—

Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate :

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

18. Place of institution of suit where local limits of jurisdiction of Courts are uncertain.—

(1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction :

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court

that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

19. Suits for compensation for wrongs to person or moveables.—Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations.

- (a) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.
- (b) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

20. Other suits to be instituted where defendants reside or cause of action arises.—Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

- (a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and volun-

- tarily resides, or carries on business, or personally works for gain ; or
- (b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution ; or
- (c) the cause of action, wholly or in part, arises.

Explanation I.—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

- (a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

- (b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. Objections to jurisdiction.—No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

22. Power to transfer suits which may be instituted in more than one Court.—Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

23. To what Court application lies.—(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

(3) Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

24. General power of transfer and withdrawal.—(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same ; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same ; or

(iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

25. Power of Governor General in Council to transfer suit.—(1) Where any party to a suit, appeal or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the Governor General in Council, who may, by notification in the Gazette of India, transfer such suit, appeal or proceeding to any other High Court.

(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case.

Institution of suits.

26. Institution of suits.—Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

Summons and

27. Summons to defendant.—Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

28. Service of summons where defendant resides in another province.—(1) A summons may be sent for service in another province to such Court and in such manner as may be prescribed by rules in force in that province. •

(2) The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

29. Service of foreign summonses.—Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts :

Provided that the Courts issuing such summonses have been established or continued by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the Gazette of India, declared the provisions of this section to apply to such Courts.

30. Power to order discovery and the like.—Subject to such conditions and limitations as may be prescribed, the Court may, at any time,

either of its own motion or on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence ;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid ;
- (c) order any fact to be proved by affidavit.

31. Summons to witness.—The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

32. Penalty for default.—The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

- (a) issue a warrant for his arrest ;
- (b) attach and sell his property ;
- (c) impose a fine upon him not exceeding five hundred rupees ;
- (d) order him to furnish security for his appearance and in default to commit him to the civil

Judgment and Decree.

33. Judgment and decree.—The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Interest.

34. Interest.—(1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

Costs.

35. Costs.—(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or

out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

PART II. EXECUTION.

General.

36. Application to orders.—The provisions of this Code relating to the execution of decrees shall, so far as they are applicable be deemed to apply to the execution of orders.

37. Definition of Court which passed a decree.—The expression “Court which passed a decree”, or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject of context, be deemed to include,—

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction

tion to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Courts by which decrees may be executed.

38. Court by which decree may be executed.

—A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

39. Transfer of decree.—(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

- (a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of jurisdiction of such other Court, or
- (b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or
- (c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed a decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Transfer of decree to Court in another province.—Where a decree is sent for execution in another province, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that province.

41. Result of execution-proceedings to be certified.—The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

42. Powers of Court in executing transferred decree.—The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

43. Execution of decrees passed by British Courts in places to which this Part does not extend or in foreign territory.—Any decree

passed by a Civil Court established in any part of British India to which the provisions relating to execution do not extend, or by any Court established or continued by the authority of the Governor General in Council in the territories of any foreign Prince or State may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in manner herein provided within the jurisdiction of any Court in British India.

44. Execution of decrees passed by Courts of native States.—The Governor General in Council may, by notification in the Gazette of India, declare that the decrees of any Civil or Revenue Courts situate in the territories of any native Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor General in Council, or any class of such decrees, may be executed in British India as if they had been passed by the Courts of British India.

45. Execution of decrees in foreign territory.—So much of the foregoing sections of this part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in British India to send a decree for execution to any Court established or continued by the authority of the Governor General in Council in the territories of any foreign Prince or State to which the Governor General in Council has, by notification in the Gazette of India, declared this section to apply.

46. Precepts.—(1) Upon the application of the decree-holder the Court which passed the

decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree :

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

Questions to be determined by Court executing decree.

47. Questions to be determined by the Court executing decree.—(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation.—For the purposes of this section a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

Limit of time for execution.

48. Execution barred in certain cases.—(1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

- (a) the date of the decree sought to be executed, or,
 - (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.
- (2) Nothing in this section shall be deemed—
- (a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented

the execution of the decree at some time within twelve years immediately before the date of the application ; or

- (b) to limit or otherwise affect the operation of article 180 of the second schedule to the Indian Limitation Act, 1877, (XV of 1877).

Transferees and legal representatives.

49. Transferee.—Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

50. Legal representative.—(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of ; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Procedure in execution.

51. Powers of Court to enforce execution.—Subject to such conditions and limitations as

may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

- (a) by delivery of any property specifically decreed ;
- (b) by attachment and sale or by sale without attachment of any property ;
- (c) by arrest and detention in prison ;
- (d) by appointing a receiver ; or
- (e) in such other manner as the nature of the relief granted may require.

52. Enforcement of decree against legal representative.—(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

53. Liability of ancestral property.—For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of

which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

54. Partition of estate of separation or share

—Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.

Arrest and detention.

55. Arrest and detention.—(1) A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall, as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which the Local Government may appoint for the detention of persons ordered by the Courts of such district to be detained :

Provided, firstly, that, for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset and before sunrise:

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such

dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorized to make the arrest has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe the judgment-debtor is to be found :

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgment-debtor and who according to the customs of the country does not appear in public, the officer authorized to make the arrest shall give notice to her that she is at liberty to withdraw, and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest :

Provided, fourthly, that, where the decree in execution of which a judgment-debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) The Local Government may, by notification in the local official Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by the Local Government in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of

money and brought before the Court, the Court shall inform him that he may apply to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

(4) Where a judgment-debtor expresses his intention to apply to be declared an insolvent and furnishes security, to the satisfaction of the Court, that he will within one month so apply, and that he will appear, when called upon, in any proceeding upon the application or upon the decree in execution of which he was arrested, the Court shall release him from arrest, and, if he fails so to apply and to appear, the Court may either direct the security to be realized or commit him to the civil prison in execution of the decree.

56. Prohibition of arrest or detention of women in execution of decree for money.—Notwithstanding anything in this part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

57. Subsistence-allowance.—The Local Government may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

58. Detention and release.—(1). Every person detained in the civil prison in execution of a decree shall be so detained,—

- (a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,
- (b) in any other case, for a period of six weeks :

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be,—

- (i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or
- (ii) on the decree against him being otherwise fully satisfied, or
- (iii) on the request of the person on whose application he has been so detained, or
- (iv) on the omission by the person, on whose application he has been so detained, to pay subsistence-allowance :

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court.

(2) A judgment-debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison. •

59. Release on ground of illness.—(1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness.

(2) Where a judgment-debtor has been arrested, the Court may release him if, in its opinion, he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom—

(a) by the Local Government, on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

Attachment.

60. Property liable to attachment and sale in execution of decree.—(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, banknotes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable

property, moveable or immoveable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf.

Provided that the following particulars shall not be liable to such attachment or sale namely:—

- (a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman ;
- (b) tools of artizans, and where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section ;
- (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him ;

- (d) books of account ;
- (e) a mere right to sue for damages ;
- (f) any right of personal service ;
- (g) stipends and gratuities allowed to pensioners of the Government, or payable out of any service family pension fund notified in the *Gazette of India* by the Governor General in Council in this behalf, and political pensions ;
- (h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty ;
- (i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—
 - (i) the whole of the salary, where the salary does not exceed twenty rupees monthly ;
 - (ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly ; and
 - (iii) one moiety of the salary in any other case ;
- (j) the pay and allowances of persons to whom the Indian Articles of War (V of 1869), apply ;
- (k) all compulsory deposits and other sums in or derived from any fund

- to which the Provident Funds Act, 1897, (IX of 1891), for the time being applies in so far as they are declared by the said act not to be liable to attachment ;
- (l) the wages of labourers and domestic servants whether payable in money or in kind ;
 - (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest ;
 - (n) a right to future maintenance ;
 - (o) any allowance declared by any law passed under the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., c. 67 and 55 & 56 Vict., c. 14), to be exempt from liability to attachment or sale in execution of a decree ; and,
 - (p) where the judgment-debtor is a person liable for the payment of land revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation.—The particulars mentioned in clauses (g), (h), (i), (j), (l) and (o) are exempt from attachment or sale whether before or after they are actually payable.

- (2) Nothing in this section shall be deemed—
 - (a) to exempt houses and other buildings with the materials and the sites

thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, or

- (b) to affect the provisions of the Army Act (44 & 45 Vict., c. 58), or of any similar law for the time being in force.

***61. Partial exemption of agricultural produce.**—The Local Government, with the previous sanction of the Governor General in Council, may, by general or special order published in the local official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the Local Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

62. Seizure of property in dwelling-house.—(1) No person executing any process under this Code directing or authorizing seizure of moveable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto,

but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be..

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions to prevent its clandestine removal.

63. Property attached in execution of decrees of several Courts.—(1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

64. Private alienation of property after attachment to be void.—Where an attachment has been made, any private transfer or delivery

of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other monies contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation.—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

Sale.

65. Purchaser's title.—Where immoveable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

66. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.—(1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

67. Power for Local Government to make rules as to sales of land in execution of decrees for payment of money.—The Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of money where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value.

Delegation to Collector of power to execute decrees against immoveable property.

68. Power to prescribe rules for transferring to Collector execution of certain decrees.—The Local Government may, with the previous sanction of the Governor General in Council, declare, by notification in the local official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector.

69. Provisions of Third Schedule to apply.—The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

70. Rules of procedure.—(1) The Local Government may make rules consistent with the aforesaid provisions—

- (a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court ;
- (b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector ;
- (c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with the respect to such orders, being subject to appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

Jurisdiction of Civil Courts barred.—

(2) A power conferred by rules made under subsection (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exerciseable by the Court or by any Court in exercise to any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

71. Collector deemed to be acting judicially.—In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially.

72. Where Court may authorize Collector to stay public sale of land.—(1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

Distribution of Assets.

73. Proceeds of execution sale to be rateably distributed among decree-holders.—

(I) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs or realization, shall be rateably distributed among all such persons :

Provided as follows :—

- (a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale ;
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold ;
- (c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—
 - first, in defraying the expenses of the sale ;
 -

secondly, in discharging the amount due under the decree ;
thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any) ; and,

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

Resistance to Execution.

74. Resistance to execution.—Where the Court is satisfied that the holder of a decree for the possession of immoveable property or that the purchaser of immoveable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at

the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.

PART III.

INCIDENTAL PROCEEDINGS.

Commissions.

75. Power of Court to issue Commissions.—Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

- (a) to examine any person ;
- (b) to make a local investigation ;
- (c) to examine or adjust accounts ; or
- (d) to make a partition.

76. Commission to another Court.—(1) A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a province other than the province in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to

the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

77. Letter of request.—In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within British India.

78. Commissions issued by foreign Courts.—The provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by—

- (a) Courts situate beyond the limits of British India and established or continued by the authority of His Majesty or of the Governor General in Council, or
- (b) Courts situate in any part of the British Empire other than British India, or
- (c) Courts of any foreign country for the time being in alliance with His Majesty.

PART IV.

SUITS IN PARTICULAR CASES.

Suits by or against the Government or Public Officers in their official capacity.

79. Suits by or against Government.—
(1) Suits by or against the Government shall be instituted by or against the Secretary of State for India in Council.

(2) Nothing in this section shall be deemed to limit or otherwise affect any information exhibited by the Advocate General in exercise of the power declared by section 111 of the East India Company Act, 1813 (33 Geo. III, c. 155).

80. Notice.—No suit shall be instituted against the Secretary of State for India in Council, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the district, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

81. Exemption from arrest and personal appearance.—In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

- (a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,
- (b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person.

82. Execution of decree.—(1) Where decree is against the Secretary of State for India in Council or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied ; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

Suits by Aliens and by or against Foreign and Native Rulers.

83. When aliens may sue.—(1) Alien enemies residing in British India with the permission of the Governor-General in Council, and alien friends, may sue in the Courts of British India, as if they were subjects of His Majesty.

(2) No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of sub-section (2), be deemed to be an alien enemy residing in a foreign country.

84. When foreign States may sue.—(1)

A foreign State may sue in any Court of British India :

Provided that such State has been recognized by His Majesty or by the Governor General in Council :

Provided, also, that the object of the suit is to enforce a private right vested in the head of such State or in any officer of such State in his public capacity.

(2) Every Court shall take judicial notice of the fact that a foreign State has or has not been recognized by His Majesty or by the Governor General in Council.

85. Persons specially appointed by Government to prosecute or defend for Princes or Chiefs.—(1)

Persons specially appointed by order of the Government at the request of any Sovereign Prince or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be

necessary to prosecute or defend on behalf of the Prince or Chief.

(3) A person appointed under this section may authorize or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

86. Suits against Princes, Chiefs, ambassadors and envoys.—(1) Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of the Governor General in Council, certified by the signature of a Secretary to the Government of India, but not without such consent, be sued in any competent Court.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued ; but it shall not be given unless it appears to the Government that the Prince, Chief, ambassador or envoy—

- (a) has instituted a suit in the Court against the person desiring to sue him, or
- (b) by himself or another trades within the local limits of the jurisdiction of the Court, or
- (c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of the Governor General in Council certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

(4) The Governor General in Council may, by notification in the *Gazette of India*, authorize a Local Government and any Secretary to that Government to exercise, with respect to any Prince, Chief, ambassador or envoy named in the notification, the functions assigned by the foregoing sub-sections to the Governor General in Council and a Secretary to the Government of India, respectively.

(5) A person may, as a tenant of immovable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

87. Style of Princes and Chiefs as parties to suits.—A Sovereign Prince or Ruling Chief may sue, and shall be sued, in the name of his State :

Provided that in giving the consent referred to in the foregoing section the Governor-General in Council or the Local Government, as the case may be, may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

Interpleader.

88. Where interpleader-suit may be instituted.—Where two or more persons claim adver-

sely to one another the same debt, sum of money or other property, moveable or immoveable, from another person, who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made, and of obtaining indemnity for himself :

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

PART V.

SPECIAL PROCEEDINGS.

Arbitration.

89. Arbitration.—(1) Save in so far as is otherwise provided by the Indian Arbitration Act, 1899, or by any other law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the Second Schedule.

(2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration after that date under any agreement or reference made before the commencement of this Code.

Special Case.

90. Power to state case for opinion of Court.—Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

Suits relating to Public Matters.

91. Public nuisances.—(1) In the case of a public nuisance the Advocate-General, or two or more persons having obtained the consent in writing of the Advocate-General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

92. Public charities.—(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate-General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Local Government within the local limits of whose jurisdiction the whole or any part of the

subject-matter of the trust is situate to obtain a decree—

- (a) removing any trustee ;
- (b) appointing a new trustee ;
- (c) vesting any property in a trustee ;
- (d) directing accounts and inquiries ;
- (e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust ;
- (f) authorizing the whole or any part of the trust-property to be let, sold mortgaged or exchanged ;
- (g) settling a scheme ; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863, (XX of 1863), no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

93. Exercise of powers of Advocate-General outside Presidency-towns.—The powers conferred by sections 91 and 92 on the Advocate-General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf. . .

PART VI.

SUPPLEMENTAL PROCEEDINGS.

94. Supplemental proceedings.—In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

- (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison ;
- (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property ;
- (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold ;
- (d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property ;
- (e) make such other interlocutory orders as may appear to the Court to be just and convenient.

95. Compensation for obtaining arrest, attachment or injunction on insufficient grounds.—(1) Where, in any suit in which an

arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

\ (a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him.

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

PART VII.

APPEALS.

Appeals from Original Decrees.

96. Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every

decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

97. Appeal from final decree where no appeal from preliminary decree.—Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

98. Decision where appeal heard by two or more Judges.—(1) Where an appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed :

Provided that where the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, they may state the point of law upon which they differ, and the appeal shall then be heard upon that point only by one or more of the other Judges, and such point shall be decided according to the opinion of the majority (if any)

of the Judges who have heard the appeal, including those who first heard it.

99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.—No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case of the jurisdiction of the Court.

Appeals from Appellate Decrees.

100. Second appeal.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely :—

- (a) the decision being contrary to law or to some usage having the force of law ;
- (b) the decision having failed to determine some material issue of law or usage having the force of law ;
- (c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

101. Second appeal on no other grounds.—No second appeal shall lie except on the grounds mentioned in section 100.

102. No second appeal in certain suits.—No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

103. Power of High Court to determine issues of fact.—In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal but not determined by the lower appellate Court.

Appeals from orders.

104. Orders from which appeal lies.—(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force from no other orders :—

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court ;
- (b) an order on an award stated in the form of a special case ;
- (c) an order modifying or correcting an award ;
- (d) an order filing or refusing to file an agreement to refer to arbitration ;

- (e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration ;
- (f) an order filing or refusing to file an award in an arbitration without the intervention of the Court ;
- (g) an order under section 95 ;
- (h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree ;
- (i) any order made under rules from which an appeal is expressly allowed by rules.

(2) No appeal shall lie from any order passed in appeal under this section.

105. Other orders.—(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction ; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

106. What Courts to hear appeals.—Where an appeal from any order is allowed, it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

General Provisions relating to Appeals.

107. Powers of Appellate Court.—(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

- (a) to determine a case finally ;
- (b) to remand a case ;
- (c) to frame issues and refer them for trial ;
- (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108. Procedure in appeals from appellate decrees and orders.—The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals—

- (a) from appellate decrees, and
- (b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

Appeals to the King in Council.

109. When appeals lie to King in Council.—Subject to such rules as may, from time to time, be made by His Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained, an appeal shall lie to His Majesty in Council—

- (a) from any decree or final order passed on appeal by a High Court or by any other Court of final appellate jurisdiction ;
- (b) from any decree or final order passed by a High Court in the exercise of original civil jurisdiction ; and
- (c) from any decree or order, when the case, as hereinafter provided, is certified to be a fit one for appeal to His Majesty in Council.

110. Value in subject-matter.—In each of the cases mentioned in clauses (a) and (b) of section 109, the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the subject-matter in dispute on appeal to His Majesty in Council must be the same sum or upwards,

or the decree or final order must involve, directly or indirectly, some claim or question to or respecting property of like amount or value,

and where the decree or final order appealed from affirms the decision of the Court immediately below the Court passing such decree or final order, the appeal must involve some substantial question of law.

111. Bar of certain appeals.—Notwithstanding anything contained in section 109, no appeal shall lie to His Majesty in Council—

- (a) from the decree or order of one Judge of a High Court established under the Indian High Courts Act, 1861, (24 and 25 Vict., c. 104), or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, where such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being ; or
- (b) from any decree from which under section 102 no second appeal lies.

112. Savings.—(1) Nothing contained in this Code shall be deemed—

- (a) to bar the full and unqualified exercise of His Majesty's pleasure in receiving or rejecting appeals to His Majesty in Council, or otherwise howsoever, or
- (b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to His Majesty in Council, or their conduct before the said Judicial Committee.

(2) Nothing herein contained applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

PART VIII.

REFERENCE, REVIEW AND REVISION.

113. Reference to High Court.—Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

114. Review.—Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

115. Revision.—The High Court may call for the record of any case which has been decided by any Court subordinate to such High

Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit.

PART IX.

SPECIAL PROVISIONS RELATING TO THE CHARTERED HIGH COURTS.

116. Part to apply only to certain High Courts.—This Part applies only to High Courts which are or may hereafter be established under the Indian High Courts Act, 1861, (24 and 25 Vict., c. 104).

117. Application of Code to High Courts.—Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to such High Courts.

118. Execution of decree before ascertainment of costs.—Where any such High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree

shall be executed forthwith, except as to so much thereof as relates to the costs ;

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

119. Unauthorized persons not to address Court.—Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

120. Provisions not applicable to High Court in original civil or insolvent jurisdiction.—(1) The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

(2) Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

PART X.

RULES.

121. Effect of rules in first Schedule.—The rules in the First Schedule shall have effect as if enacted in the body of this Code until annul-

led or altered in accordance with the provisions of this Part.

122. Power of certain High Courts to make rules.—High Courts established under the Indian High Courts Act, 1861, (24 and 25 Vict., c. 104), and the Chief Courts of the Punjab and Lower Burma, may, from time to time after previous publication make rules regulating their own procedure and the procedure of the Civil Courts subject to their superintendence, and may by such rules annul, alter or add to all or any of the rules in the First Schedule.

123. Constitution of Rule Committees in certain provinces.—(1) A Committee, to be called the Rule Committee, shall be constituted at each of the towns of Calcutta, Madras, Bombay, Allahabad, Lahore and Rangoon.

(2) Each such Committee shall consist of the following persons, namely :—

- (a) three Judges of the High Court established at the town at which such Committee is constituted, one of whom at least has served as a District Judge or (in the Punjab or Burma) a Divisional Judge for three years,
- (b) a barrister practising in that Court,
- (c) an advocate (not being a barrister) or vakil or pleader enrolled in that Court,
- (d) a Judge of a Civil Court subordinate to the High Court,

(e) in the towns of Calcutta, Madras and Bombay, an attorney.

(3) The members of each such Committee shall be appointed by the Chief Justice or Chief Judge, who shall also nominate one of their number to be president :

Provided that, if the Chief Justice or Chief Judge elects to be himself a member of a Committee, the number of other Judges appointed to be members shall be two, and the Chief Justice or Chief Judge shall be the President of the Committee. •

(4) Each member of any such Committee shall hold office for such period as may be prescribed by the Chief Justice or Chief Judge in this behalf ; and whenever any member retires, resigns, dies or ceases to reside in the province in which the Committee was constituted, or becomes incapable of acting as a member of the Committee, the said Chief Justice or Chief Judge may appoint another person to be a member in his stead.

(5) There shall be a Secretary to each such Committee, who shall be appointed by the Chief Justice or Chief Judge and shall receive such remuneration as may be provided in this behalf by the Governor-General in Council or by the Local Government, as the case may be.

124. Committee to report to High Court.—Every Rule Committee shall make a report to the High Court established at the town at which it is constituted on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules

under section 122 the High Court shall take such report into consideration.

125. Power of other High Courts to make rules.—High Courts, other than the Courts specified in section 122, may exercise the powers conferred by that section in such manner and subject to such conditions as the Governor-General in Council may determine :'

Provided that any such High Court may, after previous publication, make a rule extending within the local limits of its jurisdiction any rules which have been made by any other High Court.

126. Rules subject to sanction.—Rules made under the foregoing provisions shall be subject to the previous sanction of the following authorities, namely :—

- (a) if the rule is made by a High Court established under the Indian High Courts Act, 1861, (24 and 25 Vict., c. 104), to the sanction of the authority prescribed by section 15 of that Act for rules made under that section ;
- (b) if the rule is made by any other High Court, to the sanction of the Local Government.

127. Publication of rules.—Rules so made and sanctioned shall be published in the *Gazette of India* or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified

have the same force and effect, within the local limits of the jurisdiction of the High Court which made them, as if they had been contained in the First Schedule.

128. Matters for which rules may provide.

—(1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely :—

- (a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service ;
- (b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property and the proceeds of such sale ;
- (c) procedure in suits by way of counter-claim, and the valuation of such suits for the purposes of jurisdiction ;
- (d) procedure in garnishee and charging orders, either in addition to, or in substitution for, the attachment and sale of debts ;

- (e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not ;
- (f) summary procedure—
 - (i) in suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising—
 - on a contract express or implied ; or
 - on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty ; or
 - on a guarantee, where the claim against the principal is in respect of a debt or a liquidated demand only ; or
 - on a trust ; or
 - (ii) in suits for the recovery of immoveable property, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, or against persons claiming under such tenant ;

- (g) procedure by way of originating summons ;
- (h) consolidation of suits, appeals and other proceedings ;
- (i) delegation to any Registrar, Prothonotary or Master or other official of the Court of any judicial, quasi-judicial and non-judicial duties ; and
- (j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

129. Power of Chartered High Courts to make rules as to their original civil procedure.—Notwithstanding anything in this Code, any High Court established under the Indian High Courts Act, 1861, (24 and 25 Vict., c. 104), may make such rules not inconsistent with the Letter Patent establishing it to regulate its own procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall affect the validity of any such rules in force at the commencement of this Code.

130. Power of other High Courts to make rules as to matters other than procedure.—A High Court not established under the Indian High Courts Act, 1861, (24 and 25 Vict. c. 104), may, with the previous sanction of the Local Government, make, with respect to any matter other than procedure, any rule which any High Court so established might, under section 15 of

that Act, make with respect to any such matter for any part of the territories under its jurisdiction which is not included within the limits of a Presidency-town.

131. Publication of rules.—Rules made in accordance with section 129 or section 130 shall be published in the *Gazette of India* or in the local official Gazette, as the case may be, and shall from the date of publication or from such other date as may be specified have the force of law.

PART XI.

MISCELLANEOUS.

132. Exemption of certain women from personal appearance.—(1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

133. Exemption of other persons.—(1) The Local Government may, by notification in the local official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption.

•

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(8) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

134. Arrest other than in execution of decree.—The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

135. Exemption from arrest under civil process.—(1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtars, revenue agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

136. Procedure where person to be arrested or property to be attached is outside district.

—(1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient

security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Where a person to be arrested or moveable property to be attached under this section is within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature of Fort William in Bengal or at Madras or at Bombay, or of the Chief Court of Lower Burma, the copy of the warrant of arrest or of the order of attachment, and probable amount of the costs of the arrest or attachment, shall be sent to the Court of Small Causes of Calcutta, Madras, Bombay or Rangoon, as the case may be, and that Court, on receipt of the copy and amount, shall proceed as if it were the District Court.

137. Language of subordinate Court.—(1) The language which, on the commencement of this Code, is the language of any Court subordinate to a High Court shall continue to be the language of such subordinate Court until the Local Government otherwise directs.

(2) The Local Government may declare what shall be the language of any such Court and in what character applications to and proceedings in such Court shall be written.

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or

his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

138. Power for Local Government to require evidence to be recorded in English.—

(1) The Local Government may, by notification in the local official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

139. Oath on affidavit by whom to be administered.—In the case of any affidavit under this Code—

- (a) any Court or Magistrate, or
- (b) any officer or other person whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath to the deponent. •

140. Assessors in causes of salvage, etc.—

(1) In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may, if it thinks fit, and shall upon request of either party to such cause, summon to its assistance, in such manner as it may direct or as may be prescribed, two competent assessors; and such assessors shall attend and assist accordingly.

(2) Every such assessor shall receive such fees for his attendance, to be paid by such of the parties as the Court may direct or as may be prescribed.

141. Miscellaneous proceedings.—The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

142. Orders and notices to be in writing.—All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

143. Postage.—Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made :

Provided that that the Local Government, with the previous sanction of the Governor-General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

144. Application for restitution.—(1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

145. Enforcement of liability of surety.—Where any person has become liable as surety—

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

the decree or order may be executed against him, to the extent to which he has rendered

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himself personally liable, in the manner provided for the execution of decrees, and such person shall, for the purposes of appeal, be deemed a party within the meaning of section 47:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

146. Proceedings by or against representatives—Save as otherwise provided by this Code, or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

147. Consent or agreement by persons under disability.—In all suits to which any person under disability is a party, any consent or agreement as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person were under no disability and had given such consent or made such agreement.

148. Enlargement of time.—Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

149. Power to make up deficiency of court-fees.—Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

150. Transfer of business—Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

151. Saving of inherent powers of Court.—Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

152. Amendment of judgments, decrees or orders.—Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties. , .

153. General power to amend.—The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

154. Saving of present right of appeal.—Nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement.

155. Amendment of certain Acts.—The enactments mentioned in the Fourth Schedule are hereby amended to the extent specified in the fourth column thereof.

156. Repeals.—The enactments mentioned in the Fifth Schedule are hereby repealed to the extent specified in the fourth column thereof.

157. Continuance of orders under repealed enactments.—Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under Act VIII of 1859 or under any Code of Civil Procedure or any Act amending the same or under any other enactment hereby repealed shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

158. Reference to Code of Civil Procedure and other repealed enactments.—In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any Chapter or section of Act VIII of 1859 or any Code of Civil Procedure or any Act amending the same or any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

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THE FIRST SCHEDULE.

ORDER I.

Parties to suits.

1. Who may be joined as plaintiffs.—All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

2. Power of Court to order separate trials.—Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

3. Who may be joined as defendants.—All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.

4. Court may give judgment for or against one or more of joint parties.—Judgment may be given without any amendment—

- (a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to ;

rule (1) may apply to the Court to be made a party to such suit.

9. *Misjoinder and non-joinder.*—No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

10. *Suit in name of wrong plaintiff.*—(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

Court may strike out or add parties.—

(2) The Court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

Where defendant added, plaint to be amended.—(4) Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877, (XV of 1877) section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

11. Conduct of suit—The Court may give the conduct of the suit to such person as it deems proper.

12. Appearance of one of several plaintiffs or defendants for others.—(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

13. Objections as to non-joinder or mis-joinder.—All objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER II.*Frame of suit.*

1. *Frame of suit.*—Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. *Suit to include the whole claim.*—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Relinquishment of part of claim.—(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) *Omission to sue for one of several reliefs.*—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907. • •

3. Joinder of causes of action.—(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit.

4. Only certain claims to be joined for recovery of immoveable property.—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, except—

- (a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;
- (b) claims for damages for breach of any contract under which the property or any part thereof is held; and
- (c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

5. Claims by or against executor, administrator or heir.—No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of

which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

6. Power of Court to order separate trials.

—Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

7. Objections as to misjoinder.—All objections

on the ground of misjoinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

ORDER III.

Recognized Agents and Pleaders.

1. Appearances, etc., may be in person, by recognized agent or by pleader.—Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except, where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2. Recognized agents.—The recognized agents of parties by whom such appearances, applications and acts may be made or done are —

- (a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties ;
- (b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

3. Service of process on recognized agent.

—(1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

4. Appointment of pleader.—(1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorized by power-of-attorney to act in this behalf.

(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client.*

(3) No advocate of any High Court established under the Indian High Courts Act, 1861, (24 & 25 Vict. c 104), or of any Chief Court, and no advocate of any other High Court who is a barrister shall be required to present any document empowering him to act.

5. Service of process on pleader.—Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

6. Agent to accept service.—(1) Besides the recognized agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Appointment to be in writing and to be filed in Court.—(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

ORDER IV.

Institution of suits.

1. Suit to be commenced by plaint.—(1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

2. Register of suits.—The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the complaints are admitted.

ORDER V.

Issue and Service of Summons.

1. Summons.—(1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified :

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

2. Copy or statement annexed to summons.—Every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement.

3. Court may order defendant or plaintiff to appear in person.—(1) Where, the Court sees

reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party to be ordered to appear in person unless resident within certain limits.—No party shall be ordered to appear in person unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate), less than two hundred miles distance from the court-house.

5. Summons to be either to settle issues or for final disposal.—The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly :

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. Fixing day for appearance of defendant.—The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the sum-

mons ; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. *Summons to order defendant to produce documents relied on by him.*—The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case.

8. *On issue of summons for final disposal, defendant to be directed to produce his witnesses.*—Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

9. *Delivery or transmission of summons for service.*—(1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

10. *Mode of service.*—Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

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11. *Service on several defendants.*—Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

12. *Service to be on defendant in person when practicable, or on his agent.*—Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

13. *Service on agent by whom defendant carries on business.*—(1) In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

(2) For the purpose of this rule the master of a ship shall be deemed to be the agent of the owner or charterer.

14. *Service on agent in charge in suits for immoveable property*—Where in a suit to obtain relief respecting, or compensation for wrong to, immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

15. *Where service may be on male member of defendant's family.*—Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male

member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

16. Person served to sign acknowledgment.—Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

17. Procedure when defendant refuses to accept service, or cannot be found.—Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

18. Endorsement of time and manner of service.—The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or an-

nexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Examination of serving officer.—Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

20. Substituted service.—(1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Effect of substituted service.—(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

Where service substituted, time for appearance to be fixed.—(3) Where service is substituted by order of the Court, the Court shall fix such time

for the appearance of the defendant as the case may require.

21. *Service of summons where defendant resides within jurisdiction of another Court.*—

A summons may be sent by the Court by which it is issued, whether within or without the province, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

22. *Service, within Presidency-towns and Rangoon, of summons issued by Courts outside.*—Where a summons issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such limits, it shall be sent to the Court of Small Causes within whose jurisdiction it is to be served.

23. *Duty of Court to which summons is sent.*—The Court to which a summons is sent under rule 21 or rule 22 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

24. *Service on defendant in prison.*—Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

25. *Service where defendant resides out of British India and has no agent.*—Where the defendant resides out of British India and has no agent in British India empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by

post, if there is postal communication between such place and the place where the Court is situate.

26. Service in foreign territory through Political Agent or Court.—Where—

- (a) in the exercise of any foreign jurisdiction vested in His Majesty or in the Governor General in Council, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons issued by a Court under this Code in any foreign territory in which the defendant resides, or
- (b) the Governor General in Council has, by notification in the Gazette of India, declared that any summons so issued may be served by any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid,

the summons may be sent to such Political Agent or Court, by post or otherwise, for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement signed by such Political Agent or by the Judge or other officer of the Court that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

27. Service on civil public officer or on servant of railway company or local authority.—Where the defendant is a public officer (not belonging to His Majesty's military or naval forces or His Majesty's Indian Marine Service), or is the servant of a railway company or local authority,

the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

28. Service on soldiers.—Where the defendant is a soldier, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

29. Duty of person to whom summons is delivered or sent for service.—(1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written acknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

(2) Where from any cause service is impossible the summons shall be returned to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

30. Substitution of letter for summons.—(1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter signed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court, of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VI.

Pleadings generally.

1. **Pleading.**—"Pleading" shall mean plaint or written statement.

2. **Pleading to state material facts and not evidence.**—Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

3. **Forms of pleading.**—The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

4. **Particulars to be given where necessary.**—In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

5. **Further and better statement, or particulars.**—A further and better statement of the nature of the claim or defence, or further and better

particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

6. Condition precedent.—Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

7. Departure.—No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

8. Denial of contract.—Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

9. Effect of document to be stated.—Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

10. Malice, knowledge, etc.—Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

11. Notice.—Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

12. Implied contract, or relation.—Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

13. Presumptions of law.—Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied, (*e. g.*, consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim).

14. Pleading to be signed.—Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

15. Verification of pleadings.—(1) Save as otherwise provided by any law for the time being

in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

16. *Striking out pleadings.*—The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

17. *Amendment of pleadings.*—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

18. *Failure to amend after order.*—If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

ORDER VII.*Plaint.*

1. Particulars to be contained in plaint.—
The plaint shall contain the following particulars :—

- (a) the name of the Court in which the suit is brought ;
- (b) the name, description and place of residence of the plaintiff ;
- (c) the name, description and place of residence of the defendant, so far as they can be ascertained ;
- (d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect ;
- (e) the facts constituting the cause of action and when it arose ;
- (f) the facts showing that the Court has jurisdiction ;
- (g) the relief which the plaintiff claims ;
- (h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished ; and
- (i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

2. In money suits.—Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed :

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on

taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

3. Where the subject-matter of the Suit is immoveable property.—Where the subject-matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

4. When plaintiff sues as representative.—Where the plaintiff sues in a representative character, the plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

5. Defendant's interest and liability to be shown.—The plaint shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

6. Grounds of exemption from limitation law.—Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed.

7. Relief to be specifically stated.—Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any

relief claimed by the defendant in his written statement.

8. Relief founded on separate grounds.—Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

9. Procedure on admitting plaintiff. Concise statements.—(1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

10 Return of plaint.—(1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Procedure on returning plaint.—(2)

On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

11. *Rejection of plaint.*—The plaint shall be rejected in the following cases :—

- (a) where it does not disclose a cause of action :
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so :
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so :
- (d) where the suit appears from the statement in the plaint to be barred by any law.

12. *Procedure on rejecting plaint.*—Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

13. *Where rejection of plaint does not preclude presentation of fresh plaint* —The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Documents relied on in plaint.

14. Production of document on which plaintiff sues.—(1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

List of other documents.—(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

15. Statement in case of documents not in his possession or power.—Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

16. Suits on lost negotiable instruments.—Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

17. Production of shop-book.—(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (XVIII of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account, in his possession or power, the plaintiff shall produce the book or

account at the time of filing the complaint, together with a copy of the entry on which he relies.

Original entry to be marked and returned.—(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

18. Inadmissibility of document not produced when complaint filed.—(1) A document which ought to be produced in Court by the plaintiff when the complaint is presented, or to be entered in the list to be added or annexed to the complaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

ORDER VIII.

Written Statement and Set-off.

1. Written statement.—The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

2. New facts must be specially pleaded.—The defendant must raise by his pleading all matters which show the suit not to be maintainable, or

that the transaction is either void or voidable in point of law, and all such grounds of defence, as if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

3. Denial to be specific.—It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Evasive denial.—Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial.—Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability :

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

6. Particulars of set-off to be given in written statement.—(1) Where in a suit for the recovery of money the defendant claims to set off

against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set off.

Effect of set-off.—(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off: but this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

(a) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set off.

(e) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000 B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

7. Defence or set-off founded on separate grounds.—Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

8. New ground of defence.—Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement.

9. Subsequent pleadings.—No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

10. Procedure when party fails to present written statement called for by Court.—Where

any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER IX.

Appearance of Parties and Consequence of Non-appearance.

1. Parties to appear on day fixed in summons for defendant to appear and answer.—

On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court.

2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs —

Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed :

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

3. Where neither party appears, suit to be dismissed.—Where neither party appears when the suit is called on for hearing, the Court may make an order that the suit be dismissed.

4. Plaintiff may bring fresh suit or Court may restore suit to file.—Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

5. Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.—(1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from the date of the return made to the Court by the officer ordinarily certifying to the Court returns made by the serving officers, to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant is avoiding service of process, the Court may make an order that the suit be dismissed as against such defendant.

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

6. Procedure when only plaintiff appears. (1)—Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

When summons duly served.—(a) if it is proved that the summons was duly served, the Court may proceed *ex parte* ; •

When summons not duly served.—(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant ;

When summons served, but not in due time.—(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.—Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

8. Procedure where defendant only appears.—Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the Court shall

pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. Decree against plaintiff by default bars fresh suit.—(1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

10. Procedure in case of non-attendance of one or more of several plaintiffs.—Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

11. Procedure in case of non-attendance of one or more of several defendants.—Where there are more defendants than one, and one or more of them appear and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person—Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Setting aside Decrees ex parte.

13. Setting aside decree ex parte against defendant—In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also,

14. No decree to be set aside without notice to opposite party.—No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

ORDER X.

Examination of Parties by the Court.

1. Ascertainment whether allegations in pleadings are admitted or denied.—At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies

such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

2. Oral examination of party, or companion of party.—At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court: and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

3. Substance of examination to be written.—The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

4. Consequence of refusal or inability of pleader to answer.—(1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2, refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XI.*Discovery and Inspection.*

1. *Discovery by interrogatories.*—In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

2. *Particular interrogatories to be submitted.*—On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary either for disposing fairly of the suit or for saving costs.

3. *Costs of interrogatories.*—In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories

have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

4. Form of interrogatories.—Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

5. Corporations.—Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

6. Objections to interrogatories by answer.—Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bonâ fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

7. Setting aside and striking out interrogatories.—Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

8. Affidavit in answer, filing.—Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

9. Form of affidavit in answer.—An affidavit in answer to interrogatories shall be in Form No. 3

in Appendix C, with such variations as circumstances may require.

10. *No exception to be taken.*—No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

11. *Order to answer or answer further.*—Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *voir dire* examination, as the Court may direct.

12. *Application for discovery of documents.*—Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

13. *Affidavit of documents.*—The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to, produce, and if

shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

14. *Production of documents.*—It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

15. *Inspection of documents referred to in pleadings or affidavits.*—Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

16. *Notice to produce.*—Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

17. *Time for inspection when notice given.*—The party to whom such notice is given shall, within ten days from the receipt of such notice,

deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

18. Order for inspection.—(1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

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19. *Verified copies.*—(1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

20. *Premature discovery.*—Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the

Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

21. *Non-compliance with order for discovery.*

--Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

22. *Using answers to interrogatories at trial.*

—Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

23. *Order to apply to minors.*—This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

ORDER XII.*Admissions.*

1. Notice of admission of case.—Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

2. Notice to admit documents.—Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

3. Form of notice.—A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

4. Notice to admit facts.—Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in

favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

5. Form of admissions.—A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

6. Judgment on admissions.—Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment, as the Court may think just.

7. Affidavit of signature.—An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

8. Notice to produce documents.—Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice and of the time when it was served.

9. Costs—If a notice to admit or produce specifies documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice. ———

ORDER XIII.*Production, Impounding and Return of Documents.*

1. Documentary evidence to be produced at first hearing.—(1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. Effect of non-production of documents.—No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

3. Rejection of irrelevant or inadmissible documents.—The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

4. Endorsements on documents admitted in evidence.—(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

- (a) the number and title of the suit,
 - (b) the name of the person producing the document,
-

- (c) the date on which it was produced, and
- (d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

5. Endorsements on copies of admitted entries in books, accounts and records.—(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (VIII of 1891), where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

- (a) where the record, book or account is produced on behalf of a party, then by that party, or
- (b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the

Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

6. Endorsements on documents rejected as inadmissible in evidence.—Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be signed or initialled by the Judge.

7. Recording of admitted and return of rejected documents.—(1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

8. Court may order any document to be impounded.—Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

9. Return of admitted documents.—(1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the

document is impounded under rule 3, be entitled to receive back the same,—

- (a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and
- (b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of :

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so :

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

10. Court may send for papers from its own records or from other Courts.—(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable

delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

11. Provisions as to documents applied to material objects.—The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER XIV.

Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.

1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon

proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Issues of law and of fact.—Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

3. Materials from which issues may be framed.—The Court may frame the issues from all or any of the following materials :—

- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties ;
- (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit ;
- (c) the contents of documents produced by either party.

4. Court may examine witnesses or documents before framing issues—Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

5. Power to amend, and strike out, issues.—

(1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

6. Questions of fact or law may by agreement be stated in form of issues.—Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

- (a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement ;
- (b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct ; or
- (c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

7. Court, if satisfied that agreement was executed in good faith, may pronounce judgment.—Where the Court is satisfied, after making such inquiry as it deems proper,—

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

ORDER XV.

Disposal of the Suit at the first hearing.

1. Parties not at issue.—Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

2. One of several defendants not at issue.—Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce judgment for or against such defendant and the suit shall proceed only against the other defendants.

3. Parties at issue.—(1) Where the parties are at issue on some question of law or of fact, and

issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

4. Failure to produce evidence.—Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

ORDER XVI.

and Attendance of Witnesses.

1. Summons to attend to give evidence or produce documents.—At any time after the suit is instituted, the parties may obtain, on application to

the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

2. Expenses of witness to be paid into Court on applying for summons.—(1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Experts.—(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Scale of expenses.—(3) Where the Court is subordinate to a High Court regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

3 Tender of expenses to witness.—The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

4. Procedure where insufficient sum paid in.—(1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order

such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day.—(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

5. *Time, place and purpose of attendance to be specified in summons.*—Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

6. *Summons to produce document.*—Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

7. Power to require persons present in Court to give evidence or produce document.—

Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

8. Summons how served.—Every summons under this order shall be served as nearly as may be in the same manner as a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

9. Time for serving summons.—Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

10. Procedure where witness fails to comply with summons.—(1) Where a person, to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and

a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of his property to such amount as it thinks fit, not exceeding the amount of the costs of attachment and of any fine which may be imposed under rule 12 :

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

11. *If witness appears, attachment may be withdrawn.*—Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

12. *Procedure if witness fails to appear.*—The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and

may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any :

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

13. *Mode of attachment.*—The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this order as if the person whose property is so attached were a judgment-debtor.

14. *Court may of its own accord summon as witnesses strangers to suit.*—Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

15. *Duty of persons summoned to give evidence or produce document.*—Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

16. *When they may depart.*—(1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default on his furnishing such security, may order him to be detained in the civil prison.

17. *Application of rules 10 to 13.*—The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

18. *Procedure where witness apprehended cannot give evidence or produce document.*—Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

19. *No witness to be ordered to attend in person unless resident within certain limits.*—

No one shall be ordered to attend in person to give evidence unless he resides—

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits but at a place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

20. Consequence of refusal of party to give evidence when called on by Court.—Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

21. Rules as to witnesses to apply to parties summoned.—Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

ORDER XVII.

Adjournments.

1. Court may grant time and adjourn hearing.—(1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Costs of adjournment.—(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment :

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Procedure if parties fail to appear on day fixed.—Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

3. Court may proceed notwithstanding either party fails to produce evidence, etc.—Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

ORDER XVIII.

Hearing of the Suit and Examination of Witnesses.

1. Right to begin.—The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any

part of the relief which he seeks, in which case the defendant has the right to begin.

2. Statement and production of evidence.

—(1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

3. Evidence where several issues.—Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

4. Witnesses to be examined in open Court.

—The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

5. How evidence shall be taken in appealable cases.—In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction

and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge shall, if necessary, correct the same, and shall sign it.

6. *When deposition to be interpreted.*—

Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it is given.

7. *Evidence under section 138.*—Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

8. *Memorandum when evidence not taken down by Judge.*—Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

9. *When evidence may be taken in English.*—Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

10. *Any particular question and answer may be taken down.*—The Court may, of its own

motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question, if there appears to be any special reason for so doing.

11. Questions objected to and allowed by Court.—Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

12. Remarks on demeanour of witnesses.—The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

13. Memorandum of evidence in unappealable cases.—In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

14. Judge unable to make such memorandum to record reasons of his inability.—(1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open Court.

(2) Every memorandum so made shall form part of the record.

15. Power to deal with evidence taken before another Judge.—(1) Where a Judge is prevented by death, transfer or other cause from concluding

ing the trial of a suit, his successor may deal with any evidence or memorandum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under sec. 24.

16. *Power to examine witness immediately.*

—(1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

17. *Court may recall and examine witness.*

—The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

18. *Power of Court to inspect.*—The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

ORDER XIX.*Affidavits.*

1. Power to order any point to be proved by affidavit.—Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party *boná-fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

2. Power to order attendance of deponent for cross-examination.—(1) Upon any application, evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the Court otherwise directs.

3. Matters to which affidavits shall be confined.—(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted : provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

ORDER XX.*Judgment and Decree.*

1. Judgment when pronounced.—The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

2. Power to pronounce judgment written by Judge's predecessor.—A Judge may pronounce a judgment written but not pronounced by his predecessor.

3. Judgment to be signed.—The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.

4. Judgments of Small Cause Courts.—(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

Judgments of other Courts.—(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

5. Court to state its decision on each issue.—In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

6. Contents of decree.—(1) The decree shall agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall

specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

7. Date of decree.—The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

8. Procedure where Judge has vacated office before signing decree.—Where a Judge has vacated office after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

9. Decree for recovery of immoveable property.—Where the subject-matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

10. Decree for delivery of moveable property.—Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

11. Decree may direct payment by instalments.—(1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

Order, after decree, for payment by instalments.—(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

12. Decree for possession and mesne profits.—(1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree—

- (a) for the possession of the property ;
- (b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits ;
- (c) directing an inquiry as to rent or mesne profits from the institution of the suit until—
 - (i) the delivery of possession to the decree-holder.
 - (ii) the relinquishment of possession by the judgment-debtor with notice to

the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree,

whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

13. Decree in administration-suit.—(1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being within the local limits of the Court in which the administration suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons, who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

14. Decree in pre-emption-suit.—(1) Where the Court decrees a claim to pre-emption in respect

of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

- (a) specify a day on or before which the purchase-money shall be so paid, and
- (b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to pre-emption, the decree shall direct—

- (a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and,
- (b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

15. Decree in suit for dissolution of partnership.—Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

16. Decree in suit for account between principal and agent.—In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

17. Special directions as to accounts.—The Court may either by the decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

18. Decree in suit for partition of property or separate possession of a share therein.—Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54 ;

(2) if and in so far as such decree relates to any other immoveable property or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

19. Decree when set-off is allowed.—(1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Appeal from decree relating to set-off.

—(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

20. Certified copies of judgment and decree to be furnished.—Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

ORDER XXI.*Execution of Decrees and Orders.**Payment under Decree.***1. Modes of paying money under decree.—**

(1) All money payable under a decree shall be paid as follows, namely :—

- (a) into the Court whose duty it is to execute the decree ; or
- (b) out of Court to the decree-holder ; or
- (c) otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of sub-rule (1) notice of such payment shall be given to the decree-holder.

2. Payment out of Court to decree-holder.—(1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified ; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognized by any Court executing the decree.

Courts executing Decrees.

3. Lands situate in more than one jurisdiction.—Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

4. Transfer to Court of Small Causes.—Where a decree has been passed in a suit of which the value as set forth in the plaint did not exceed two thousand rupees and which, as regards its subject-matter, is not excepted by the law for the time being in force from the cognizance of either a Presidency or a Provincial Court of Small Causes, and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificates mentioned in rule 6; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

5. Mode of transfer.—Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, where the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

6. Procedure where Court desires that its own decree shall be executed by another Court.—The Court sending a decree for execution shall send—

(a) a copy of the decree ;

- (b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied ; and
- (c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

7. Court receiving copies of decree, etc., to file same without proof.—The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, require such proof.

8. Execution of decree or order by Court to which it is sent.—Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court, or be transferred for execution to any subordinate Court of competent jurisdiction.

9. Execution by High Court of decree transferred by other Court.—Where the Court to which the decree is sent for execution is a High Court, the decree shall be executed by such Court in the same manner as if it had been passed by such Court in the exercise of its ordinary original civil jurisdiction.

Application for execution.

10. Application for execution.—Where the holder of a decree desires to execute it, he shall apply to the Court which passed decree or to the officer (if

any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

11. Oral application.—(1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

Written application.—(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely :—

- (a) the number of the suit ;
- (b) the names of the parties ;
- (c) the date of the decree ;
- (d) whether any appeal has been preferred from the decree ;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree ;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results ;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree whether passed before

or after the date of the decree sought to be executed ;

- (h) the amount of the costs (if any) awarded ;
- (i) the name of the person against whom execution of the decree is sought ; and
- (j) the mode in which the assistance of the Court is required, whether—
 - (i) by the delivery of any property specifically decreed ;
 - (ii) by the attachment and sale, or by the sale without attachment, of any property ;
 - (iii) by the arrest and detention in prison of any person ;
 - (iv) by the appointment of a receiver ;
 - (v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

12. *Application for attachment of moveable property not in judgment-debtor's possession.*—

Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

13. *Application for attachment of immoveable property to contain certain particulars.*—

Where an application is made for the attachment of any immoveable property belonging to a judgment-debtor, it shall contain at the foot—

- (a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a specification of such boundaries or numbers ; and
- (b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

14. Power to require certified extract from Collector's register in certain cases.—Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

15. Application for execution by joint decree-holder.—(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

16. Application for execution by transferee of decree.—Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder.

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution;

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

17. Procedure on receiving application for execution of decree.—(1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as may be applicable to the case have been complied with; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there are within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1) it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application :

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

18. Execution in case of cross-decrees.—(1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

(a) if the two sums are equal, satisfaction shall be entered upon both decrees ; and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless—

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Illustrations.

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this rule.

(b) A and B, co-plaintiffs, obtain a decree for Rupees 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

(d) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

19. Execution in case of cross-claims under same decree.—Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,—

- (a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and
- (b) if the two sums are unequal, execution may be taken out only by the party entitled to the larger sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

20. Cross-decrees and cross-claims in mortgage suits.—The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

21. Simultaneous execution.—The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

22. Notice to show cause against execution in certain cases.—(1) Where an application for execution is made—

- (a) more than one year after the date of the decree, or
- (b) against the legal representative of a party to the decree,

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him :

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made

on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

23. Procedure after issue of notice.—(1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

Process for execution.

24. Process for execution.—(1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

25. Endorsement on process.—(1) The officer entrusted with the execution of the process shall endorse thereon the day on, and the manner in, which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reason of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability and shall record the result.

Stay of execution.

26. When Court may stay execution—(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the dis-

charge of such person pending the result of the application.

Power to require security from, or impose conditions upon, judgment-debtor.—(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

27. Liability of judgment-debtor discharged.—No order of restitution or discharge under rule 26 shall prevent the property or person of a judgment-debtor from being retaken in execution of the decree sent for execution.

28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to.—Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

29. Stay of execution pending suit between decree-holder and judgment-debtor.—Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Mode of execution.

30. Decree for payment of money.—Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor or

by the attachment and sale of his property, or by both.

31. Decree for specific moveable property.

—(1) Where the decree is for any specific moveable, or for any share in a specific moveable, it may be executed by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease.

32. Decree for specific performance, for restitution of conjugal rights, or for an injunction.—(1) Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunc-

tion, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation, or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done, may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judg-

ment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Illustration.

A, a person of little substance, erects a building which renders uninhabitable a family mansion belonging to B. A in spite of his detention in prison and the attachment of his property, declines, to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

33. Discretion of Court in executing decrees for restitution of conjugal rights.—(1) Notwithstanding anything in rule 32, the Court, either at the time of passing a decree for the restitution of conjugal rights or at any time afterwards, may order that the decree shall not be executed by detention in prison.

(2) Where the Court has made an order under sub-rule (1), and the decree-holder is the wife, it may order that, in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(3) The Court may from time to time vary or modify any order made under sub-rule (2) for the periodical payment of money, either by altering the times of payment or by increasing or diminishing

the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just.

(4) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the payment of money.

34. Decree for execution of document, or endorsement of negotiable instrument.—(1)

Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the judge or such officer as may be appointed in this behalf shall execute the document so delivered..

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely :—

“ C. D., Judge of the Court of

(or as the case may be), for A.B., in a suit by E.F., against A.B.”,

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

35. Decree for immoveable property.—(1)

Where a decree is for the delivery of any immoveable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immoveable property such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after

giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

36. Decree for delivery of immoveable property when in occupancy of tenant.—Where a decree is for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Arrest and detention in the Civil prison.

37. Discretionary power to permit judgment-debtor to show cause against detention in prison.—(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court may, instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison.

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

38. Warrant for arrest to direct judgment-debtor to be brought up.—Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.

39. Subsistence allowance.—(1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge think sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57 or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit :

· Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

40. *Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.*—

(1) Where a judgment-debtor appears before the Court in obedience to a notice issued under rule 37, or is brought before the Court after being arrested in execution of a decree for the payment of money and it appears to the Court that the judgment-debtor is unable from poverty or other sufficient cause to pay the amount of the decree or, if that amount is payable by instalments, the amount of any instalment thereof, the Court may, upon such terms (if any) as it thinks fit, make an order disallowing the application for his arrest and detention, or directing his release, as the case may be.

(2) Before making an order under sub-rule (1), the Court may take into consideration any allegation of the decree-holder touching any of the following matters, namely :—

- (a) the decree being for a sum for which the judgment-debtor was bound in any fiduciary capacity to account ;
- (b) the transfer, concealment or removal by the judgment-debtor of any part of his property after the date of the institution of the suit in which the decree was passed, or the commission by him after that date of any other act of bad faith in relation to his property, with the object or effect of obstructing or delaying the decree-holder in the execution of the decree ;
- (c) any undue preference given by the judgment-debtor to any of his other creditors ;

- (d) refusal or neglect on the part of the judgment-debtor to pay the amount of the decree or some part thereof when he has, or since the date of the decree has had, the means of paying it ;
- (e) the likelihood of the judgment-debtor absconding or leaving the jurisdiction of the Court with the object or effect of obstructing or delaying the decree-holder in the execution of the decree.

(3) While any of the matters mentioned in sub-rule (2) are being considered, the Court may, in its discretion, order the judgment-debtor to be detained in the civil prison, or leave him in the custody of an officer of the Court, or release him on his furnishing security, to the satisfaction of the Court, for his appearance when required by the Court.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) Where the Court does not make an order under sub-rule (1), it shall cause the judgment-debtor to be arrested if he has not already been arrested and, subject to the other provisions of this Code, commit him to the civil prison.

Attachment of Property.

41. Examination of judgment-debtor as to his property.—Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

- (a) the judgment-debtor, or
- (b) in the case of a corporation, any officer thereof, or
- (c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.—Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

43. Attachment of moveable property, other than agricultural produce, in possession of judgment-debtor.—Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

44. Attachment of agricultural produce.—Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,—

- (a) where such produce is a growing crop, on the land on which such crop has grown, or
- (b) where such produce has been cut or gathered, on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

45 Provisions as to agricultural produce under attachment.—(1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and, for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this

behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

46. Attachment of debt, share and other property not in possession of judgment-debtor.

--(1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a corporation,
- (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,—

- (i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment

thereof until the further order of the Court ;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon ;

(iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

47. Attachment of share in moveables —

Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

48 Attachment of salary or allowances of public officer or servant of railway company or local authority.—(1) Where the property to be attached is the salary or allowances of a public

officer or of a servant of a railway company or local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the Government may by notification in the *Gazette of India* or in the local official Gazette, as the case may be, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the railway company or local authority, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits if he is in receipt of any salary or allowances payable out of His Majesty's Indian revenues or the funds of a railway company carrying on business in any part of British India or local authority in British India; and the Government or the railway company or local

authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

49. Attachment of partnership property.

—(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners or such of them as are within British India.

(5) Every application made by any partner of the judgment debtor, under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not

join in the application and as are within British India.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

50. Execution of decree against firm.—(1) Where a decree has been passed against a firm, execution may be granted—

- (a) against any property of the partnership ;
- (b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner ;
- (c) against any person who has been individually served as a partner with a summons and has failed to appear :

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of section 247 of the Indian Contract Act, 1872, (IX of 1872).

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and

be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

51. Attachment of negotiable instruments.—Where the property is a negotiable instrument not deposited in a Court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

52. Attachment of property in custody of Court or public officer.—Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued :

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

53. Attachment of decrees.—(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

(a) if the decrees were passed by the same

Court, then by order of such Court, and,

- (b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—
 - (i) the Court which passed the decree sought to be executed cancels the notice, or
 - (ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached,

prohibiting him from transferring or charging the same in any way ; and, where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached ; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

54. Attachment of immoveable property.—

(1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

55. Removal of attachment after satisfaction of decree.—Where—

- (a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or
 - (b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or
 - (c) the decree is set aside or reversed,
- the attachment shall be deemed to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

56. Order for payment of coin or currency notes to party entitled under decree.—Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

57. Determination of attachment.—Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Investigation of claims and objections.

58. Investigation of claims to, and objections to attachment of, attached property.—

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit :

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

Postponement of sale.— (2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

59. Evidence to be adduced by claimant — The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

60. Release of property from attachment.— Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

61. Disallowance of claim to property attached.—Where the Court is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

62. Continuance of attachment subject to claim of incumbrancer.—Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

63. Saving of suits to establish right to attached property.—Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Sale generally.

64. Power to order property attached to be sold and proceeds to be paid to person entitled.—Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

65. Sales by whom conducted and how made.—Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an

officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

66. Proclamation of sales by public auction.

—(1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

- (a) the property to be sold ;
- (b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government ;
- (c) any incumbrance to which the property is liable ;
- (d) the amount for the recovery of which the sale is ordered ; and
- (e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner herein before prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

67. Mode of making proclamation.—(1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the local official Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

68. Time of sale.—Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

69. Adjournment or stoppage of sale.—(1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discre-

tion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court which ordered the sale.

70. *Saving of certain sales.*—Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector.

71. *Defaulting purchaser answerable for loss on re-sale.*—Any deficiency of price which may happen on a re-sale, by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

72. *Decree-holder not to bid for or buy property without permission.*—(1) No holder of a decree in execution of which property is sold shall,

without the express permission of the Court, bid for or purchase the property.

Where decree-holder purchases, amount of decree may be taken as payment.—(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

73. Restriction on bidding or purchase by officers.—No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Sale of moveable property.

74. Sale of agricultural produce.—(1) Where the property to be sold is agricultural produce, the sale shall be held,—

- (a) if such produce is a growing crop, on or near the land on which such crop has grown, or,
- (b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorized to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

75. *Special provisions relating to growing crops.*—(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

76. *Negotiable instruments and shares in corporations.*—Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be

made by public auction, authorize the sale of such instrument or share through a broker.

77. Sale by public auction.—(1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

78. Irregularity not to vitiate sale, but any person injured may sue.—No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

79. Delivery of moveable property, debts and shares.—(1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is moveable property in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the per-

son in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.

80. *Transfer of negotiable instruments and shares.*—(1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in its behalf may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely :—

A. B. by C. D., Judge of the Court of
(or as the case may be), in a suit by E. F. against
A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or divi-

dend due thereon and to sign a receipt for the same ; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

81. Vesting order in case of other property.

—In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct ; and such property shall vest accordingly.

Sale of immoveable property.

82. What Courts may order sales.—Sales of immoveable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

83. Postponement of sale to enable judgment-debtor to raise amount of decree.—(1) Where an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorising him within a period to be mentioned therein, and notwithstanding anything contained in section 64, to make the proposed mortgage, lease or sale :

Provided that all monies payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-

holder is entitled to set off such money under the provisions of rule 72, into Court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

84. Deposit by purchaser and re-sale on default.—(1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and, in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

85. Time for payment in full of purchase-money.—The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property :

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86. Procedure in default of payment.—In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Govern-

ment, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

87. Notification on re-sale.—Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

88. Bid of co-sharer to have preference.—Where the property sold is a share of undivided immoveable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

89. Application to set aside sale on deposit.
(1)—Where immoveable property has been sold in execution of a decree, any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,—

- (a) for payment to the purchaser, a sum equal to five per cent. of the purchase money, and
- (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he

shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

90. Application to set aside sale on ground of irregularity or fraud.—(1) Where any immoveable property has been sold in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

91. Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest.—The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

92. Sale when to become absolute or be set aside.—(1) Where no application is made under rule 89, rule 90 or rule 91 or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) No suit to set aside an order made under this rule shall be brought by any person against whom such order is made.

93. *Return of purchase money in certain cases.*—Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

94. *Certificate to purchaser.*—Where a sale of immoveable property has become absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute.

95. *Delivery of property in occupancy of judgment-debtor.*—Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any person whom he may appoint to receive delivery on his behalf in

possession of the property, and, if need be, by removing any person who refuses to vacate the same.

96. Delivery of property in occupancy of tenant.—Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance to delivery of possession to decree-holder or purchaser.

97. Resistance or obstruction to possession of immoveable property.—(1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

98. Resistance or obstruction by judgment-debtor.—Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at

the instance of the applicant, order the judgment-debtor, or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

99. Resistance or obstruction by bona-fide claimant.—Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the Court shall make an order dismissing the application.

100. Dispossession by decree-holder or purchaser.—(1) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Bona-fide claimant to be restored to possession.—Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor it shall direct that the applicant be put into possession of the property.

102. Rules not applicable to transferee lite pendente.—Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in

which the decree was passed or to the dispossession of any such person.

103. Orders conclusive subject to regular suit—Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property ; but, subject to the result of such suit, if any, the order shall be conclusive.

ORDER XXII.

Death, Marriage and Insolvency of Parties.

1. No abatement by party's death, if right to sue survives.—The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.—Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.—(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the

deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. Procedure in case of death of one of several defendants or of sole defendant.—(1)

Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

5. Determination of question as to legal representative.—Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

6. No abatement by reason of death after hearing.—Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the

judgment, but judgment may in such case be pronounced notwithstanding the death and *shall have the same force and effect as if it had been pronounced before the death took place.*

7. Suit not abated by marriage of female party.—(1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

8. When plaintiff's insolvency bars suit.—(1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

Procedure where assignee fails to continue suit or give security.—(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

9. Effect of abatement or dismissal.—(1)

Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Indian Limitation Act, 1877, (XV of 1877), shall apply to applications under sub-rule (2).

10. Procedure in case of assignment before final order in suit.—(1)

In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

11. Application of Order to appeals.—In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

12. Application of Order to proceedings.—Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.

ORDER XXIII.*Withdrawal and Adjustment of Suits.*

1. Withdrawal of suit or abandonment of part of claim—(1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied—

- (a) that a suit must fail by reason of some formal defect, or
- (b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

2. Limitation law not affected by first suit.—

In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

3. *Compromise of suit.*—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

4. *Proceedings in execution of decrees not affected.*—Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV.

Payment into Court.

1. *Deposit by defendant of amount in satisfaction of claim.*—The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

2. *Notice of deposit.*—Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

3. *Interest on deposit not allowed to plaintiff after notice*—No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

4. *Procedure where plaintiff accepts deposit as satisfaction in part.*—(1) Where the plaintiff

accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where he accepts it as satisfaction in full.—(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(a) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c) A owes B Rs. 100, and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER XXV.*Security for Costs.*

1. When security for costs may be required from plaintiff.—(1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Residence out of British India.—(2) Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of sub-rule (1).

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within British India.

2. Effect of failure to furnish security.—(1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dis-

missal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI.

Commissions.

Commissions to examine witnesses.

1. Cases in which Court may issue mission to examine witness.—Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

2. Order for commission.—An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

3. Where witness resides within Court's jurisdiction.—A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute.

4. Persons for whose examination Commission may issue.—(1) Any Court may in any suit issue a commission for the examination of—

- (a) any person resident beyond the local limits of its jurisdiction ;
- (b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and
- (c) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being a High Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

5. Commission or Request to examine witness not within British India.—Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

6. Court to examine witness pursuant to commission.—Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

7. Return of commission with depositions of witnesses.—Where a commission has been duly executed, it shall be returned, together with the

evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

8. When depositions may be read in evidence.—Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

- (a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or
- (b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for local

9. Commissions to make local investigations.—In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of

ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court :

Provided that, where the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

10. Procedure of Commissioner.—(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

Report and depositions to be evidence in suit. Commissioner may be examined in person.—

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Commissions to examine accounts.

11. Commission to examine or adjust accounts.—In any suit in which an examination or

adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

12. Court to give Commissioner necessary Instructions—(1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Proceedings and report to be evidence. Court may direct further inquiry.—(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but when the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Commissions to make partitions.

13. Commission to make partition of immoveable property.—Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

14. Procedure of Commissioner.—(1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

General provisions.

15. Expenses of Commission to be paid into Court.—Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

16. Powers of Commissioners.—Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

- (a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

- (b) call for and examine documents and other things relevant to the subject of inquiry ;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.

17. Attendance and examination of witnesses before Commissioner.—(1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of British India, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

(2) A Commissioner may apply to any Court (not being a High Court) within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

18. Parties to appear before Commissioner.—(1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

ORDER XXVII.

Suits by or against the Government or Public Officers in their official capacity.

1. Suits by or against Government.—In any suit by or against the Secretary of State for India in Council, the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

2. Persons authorized to act for Government.—Persons being *ex-officio* or otherwise authorized to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

3. Plaints in suit by or against Government.—In suits by or against the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of the plaintiff or defendant, it shall be sufficient to insert the words "The Secretary of State for India in Council."

4. Agent for Government to receive process.—The Government pleader in any Court, or such other persons as the Local Government may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the Secretary of State for India in Council issued by such Court.

5. Fixing of day for appearance on behalf of Government.—The Court, in fixing the day for the Secretary of State for India in Council to an-

swer to the plaint, shall allow a reasonable time for necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the said Secretary of State for India in Council or the Government, and may extend the time at its discretion.

6. Attendance of person able to answer questions relating to suit against Government.

—The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the Secretary of State for India in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

7. Extension of time to enable public officer to make reference to Government.—(1) Where

the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

8. Procedure in suits against public officer.

—(1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties :

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

ORDER XXVIII.

Suits by or against Military Men.

1. Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.—(1) Where any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

(2) The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting the suit in person.

Explanation.—In this Order the expression “commanding officer” means the officer in actual command for the time being of any regiment, corps, detachment or depot to which the officer or soldier belongs.

2. *Person so authorized may act personally or appoint pleader.*—Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend in person in the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

3. *Service on person so authorized, or on his pleader, to be good service.*—Processes served upon any person authorized by an officer or a soldier under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER XXIX.

Suits by or against Corporations.

1. *Subscription and verification of pleading.*—In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

2. *Service on corporation.*—Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

3. Lower Court to require personal attendance of officer of corporation.—The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

ORDER XXX.

Suits by or against Firms and Persons carrying on business in names other than their own.

1. Suing of partners in name of firm—(1) Any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

2 Disclosure of partners' names.—(1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless continue in the name of the firm.

3. Service.—Where persons are sued as partners in the name of their firm, the summons shall be served either—

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within British India upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without British India:

Provided that, in the case of a partnership which has been dissolved to the knowledge of

the plaintiff before the institution of the suit. the summons shall be served upon every person within British India whom it is sought to make liable.

4. *Right of suit on death of partner.*—(1) Notwithstanding anything contained in section 45 of the Indian Contract Act, 1872, (IX of 1872), where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit,
or

(b) to enforce any claim against the survivor
or survivors.

5. *Notice in what capacity served.*—Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

6. *Appearance of partners.*—Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

7. *No appearance except by partners.*—Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a partner of the firm sued.

8. *Appearance under protest.*—Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

9. *Suits between co-partners.*—This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

10. *Suit against person carrying on business in name other than his own.*—Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

ORDER XXXI.*Suits by or against Trustees, Executors and Administrators.***1. Representation of beneficiaries in suits concerning property vested in trustees, etc.—**

In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

2. Joinder of trustees, executors and administrators.—Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them :

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside British India, need not be made parties.

3. Husband of married executrix not to join.—Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or her.

ORDER XXXII.

*Suits by or against Minors and Persons of
Unsound Mind.*

1. Minor to sue by next friend.—Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

2. Where suit is instituted without next friend, plaint to be taken off the file.—(1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit.

3. Guardian for the suit to be appointed by Court for minor defendant.—(1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor

and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

4. *Who may act as next friend or be appointed guardian for the suit.*—(1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interest-

ed, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

5. Representation of minor by next friend or guardian for the suit—(1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

6. Receipt by next friend or guardian for the suit of property under decree for minor.—

(1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

(a) by way of compromise before decree or order, or

(b) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such

directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

7. Agreement or compromise by next friend or guardian for the suit.—(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

8 Retirement of next friend.—(1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

9. Removal of next friend.—(1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the

next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers, for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

10. Stay of proceedings on removal, etc., of next friend.—(1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

11. Retirement, removal or death of guardian for the suit.—(1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

12. Course to be followed by minor plaintiff or applicant on attaining majority.—(1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read thenceforth thus:—

“A. B., late a minor, by C. D., his next friend, but now having attained majority.”

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex-parte*: but no order discharging a next friend and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

13 Where minor co-plaintiff attaining majority desires to repudiate suit.—(1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

XXXII.] SUITS BY OR AGAINST MINORS, ETC.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

14. *Unreasonable or improper suit.*—(1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by a next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

15. *Application of rules to persons of unsound mind.*—The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

16. *Saving for Princes and Chiefs.*—Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of the Governor General in Council or a Local Government in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

ORDER XXXIII.*Suits by Paupers.*

1. *Suits may be instituted in forma pauperis.*
—Subject to the following provisions, any suit may be instituted by a pauper.

Explanation.—A person is a “pauper” when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

2. *Contents of application.*—Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

3. *Presentation of application*—Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

4. *Examination of applicant.*—(1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the appli-

cant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission.—(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

5. *Rejection of application.*—The Court shall reject an application for permission to sue as a pauper—

- (a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or
- (b) where the applicant is not a pauper, or
- (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
- (d) where his allegations do not show a cause of action, or
- (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

6. *Notice of day for receiving evidence of applicant's pauperism.*—Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce

in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

7. Procedure at hearing.—(1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

8. Procedure if application admitted.—Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

9. Dispaupering—The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

- (a) if he is guilty of vexatious or improper conduct in the course of the suit ;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper ; or

- (c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

10. *Costs where pauper succeeds.*—Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

11. *Procedure where pauper fails.*—Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

- (a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or

- (b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

12. *Government may apply for payment of court-fees.*—The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10 or rule 11.

13. Government to be deemed a party.—All matters arising between the Government and any party to the suit under rule 10, rule 11 or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

14. Copy of decree to be sent to Collector.—Where an order is made under rule 10, rule 11 or rule 12, the Court shall forthwith cause a copy of the decree to be forwarded to the Collector.

15. Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.—An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

16. Costs.—The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

ORDER XXXIV.

Suits relating to Mortgages of Immoveable Property.

1. Parties to suits for foreclosure, sale and redemption.—Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

Explanation.—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit ; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

2. Preliminary decree in foreclosure-suit.—
In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a decree—

- (a) ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, or
- (b) declaring the amount so due at the date of such decree, and directing—
- (c) that if the defendant pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property, but
- (d) that, if such payment is not made on or before the day to be fixed by the Court,

the defendant shall be debarred from all right to redeem the property.

3. Final decree in foreclosure-suit.—(1) Where, on or before the day fixed, the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

- (a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required,
- (b) ordering him to retransfer the mortgaged property as directed in the said decree, and, also, if necessary,
- (c) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property :

Power to enlarge time.—Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time, postpone the day fixed for such payment.

Discharge of debt.—(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

4. Preliminary decree in suit for sale.—(1) In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in clauses (a), (b) and (c) of rule 2 and also directing that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid, together with subsequent interest and subsequent costs, and that the balance (if any) be paid to the defendant or other persons entitled to receive the same.

Power to decree sale in foreclosure-suit.—(2) In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff or of any person interested either in the mortgage-money or in the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit including the deposit in Court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.

5. Final decree in suit for sale.—(1) Where on or before the day fixed the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

- (a) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required,

- (b) ordering him to retransfer the mortgaged property as directed in the said decree,
and also, if necessary,
- (c) ordering him to put the defendant in possession of the property.

(2) Where such payment is not so made, the Court shall, on application made in that behalf by the plaintiff, pass a decree that the mortgaged property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in rule 4.

6. *Recovery of balance due on mortgage.*—

Where the net proceeds of any such sale are found to be insufficient to pay the amount due to the plaintiff, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such amount.

7. *Preliminary decree in redemption-suit.*

—In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree—

- (a) ordering that an account be taken of what will be due to the defendant for principal and interest on the mortgage, and for his costs of the suit (if any) awarded to him on the day next hereinafter referred to, or
- (b) declaring the amount so due at the date of such decree,
and directing—
- (c) that, if the plaintiff pays into Court the amount so due on a day within six months from the date of declaring in Court the amount so due, to be fixed by the Court, the defendant shall deliver

up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff in possession of the property, but

- (d) that, if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage is simple or usufructuary) be debarred from all right to redeem or (unless the mortgage is by conditional sale) that the mortgaged property be sold.

8. Final decree in redemption-suit.—(1) Where, on or before the day fixed, the plaintiff pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in rule 10, the Court shall pass a decree—

- (a) ordering the defendant to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up, and, if so required,
- (b) ordering him to retransfer the mortgaged property as directed in the said decree, and, also, if necessary,
- (c) ordering him to put the plaintiff in possession of the property.

(2) Where such payment is not so made, and the mortgage is not simple or usufructuary, the

Court shall, on application made in that behalf by the defendant, pass a decree that the plaintiff and all persons claiming through or under him be debarred from all right to redeem the mortgaged property and also, if necessary, ordering the plaintiff to put the defendant in possession of the property.

(3) On the passing of a decree under sub-rule (2) the debt secured by the mortgage shall be deemed to be discharged.

(4) Where such payment is not so made, and the mortgage is not by conditional sale, the Court shall, on application made in that behalf by the defendant, pass a decree that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and that the balance (if any) be paid to the plaintiff or other persons entitled to receive the same :

Power to enlarge time.—Provided that the Court may, upon good cause shown and upon such terms (if any) as it thinks fit, from time to time postpone the day fixed for payment.

9. Decree where nothing is found due or where mortgagee has been overpaid—Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to retransfer the property and to pay to the plaintiff the amount which may be found due to him ; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

10. *Costs of mortgagee subsequent to decree.*

—In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure or sale or redemption, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure or sale or redemption up to the time of actual payment.

11. *Right of mesne mortgagee to redeem and foreclose.*—Where property is mortgaged for successive debts to successive mortgagees, any mesne mortgagee may institute a suit to redeem the interests of the prior mortgagees and to foreclose the rights of those that are posterior to himself and of the mortgagor.

12. *Sale of property subject to prior mortgage.*—Where any property the sale of which is directed under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

13. *Application of proceeds.*—(1) Such proceeds shall be brought into Court and applied as follows:—

- first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;
- secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith;
- thirdly, in payment of all interest due on account of the mortgage in consequence

whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act, 1882, (IV of 1882).

14. Suit for sale necessary for bringing mortgaged property to sale.—(1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforcement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

(2) Nothing in sub-rule (1) shall apply to any territories to which the Transfer of Property Act, 1882, (IV of 1882), has not been extended.

15. Charges—All the provisions contained in this Order as to the sale or redemption of mortgaged property shall, so far as may be, apply to property subject to a charge within the meaning of section 100 of the Transfer of Property Act, 1882, (IV of 1882).

ORDER XXXV.*Interpleader.*

1. *Plaint in interpleader-suit.*—In every suit of interpleader the plaint shall, in addition to the other statements necessary for plaints, state—

- (a) that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs ;
- (b) the claims made by the defendants severally ; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

2. *Payment of thing claimed into Court.*—Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to any order in the suit.

3. *Procedure where defendant is suing plaintiff.*—Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him ; and his costs in the suit so stayed may be provided for in such suit ; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

4. *Procedure at first hearing.*—(1) At the first hearing the Court may—

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him

his costs, and dismiss him from the suit; or

- (b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

- (a) that an issue or issues between the parties be framed and tried, and
- (b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff, and shall proceed to try the suit in the ordinary manner.

5. Agents and tenants maynot institute interpleader-suits.—Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their land lords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claims the jewels from B. B may institute an interpleader-suit against A and C.

6. Charge of plaintiff's costs.—Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER XXXVI.

Special Case.

1. Power to state case for Court's opinion.—

(1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such questions,—

- (a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them ; or
- (b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them ; or
- (c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

2. Where value of subject-matter must be stated.—Where the agreement is for the delivery of any property, or for the doing, or the refraining

from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

3. Agreement to be filed and registered as suit.—(1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

4. Parties to be subject to Court's jurisdiction.—Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

5. Hearing and disposal of case.—(1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the parties, or after taking such evidence as it thinks fit,—

- (a) that the agreement was duly executed by them,
- (b) that they have a *bona fide* interest in the question stated therein, and

(c) that the same is fit to be decided, it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

ORDER XXXVII.

Summary Procedure on Negotiable Instruments.

1. Application of Order.—This Order shall apply only to—

- (a) the High Courts of Judicature at Fort William, Madras and Bombay ;
- (b) the Chief Court of Lower Burma ;
- (c) the Court of the Judicial Commissioner of Sind ; and
- (d) any other Court to which sections 532 of the Code of Civil Procedure, 1882, (XIV of 1882) have been already applied.

2. Institution of summary suits upon bills of exchange, etc.—(1) All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4. in Appendix B or in such other form as may be from time to time prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend ; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted, and the

plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and such sum for costs as may be prescribed, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be executed forthwith.

3. Defendant showing defence on merits to have leave to appear.—(1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

4. Power to set aside decree.—After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

5. Power to order bill etc., to be deposited with officer of Court.—In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

6. Recovery of cost of noting non-acceptance of dishonoured bill or note.—The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

7. Procedure in suits.—Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII.

Arrest and Attachment before Judgment.

Arrest before Judgment.

1. Where defendant may be called upon to furnish security for appearance—Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of

the Court his property or any part thereof, or

- (b) that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance :

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff's claim ; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

2. Security.—(1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

3. Procedure on application by surety to be discharged.—(1) A surety for the appearance of a defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

4. Procedure where defendant fails to furnish security or find fresh security.—Where the defendant fails to comply with any order under rule 2 or rule 3, the Court may commit him to the civil prison until the decision of the suit or, where a decree is passed against the defendant, until the decree has been satisfied :

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject matter of the suit does not exceed fifty rupees :

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Attachment before Judgment.

5. Where defendant may be called upon to furnish security for production of property.—

(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defend-

ant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

6. Attachment where cause not shown or security not furnished.—(1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

7. Mode of making attachment.—Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

8. Investigation of claim to property attached before judgment.—Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

9. Removal of attachment when security furnished or suit dismissed—Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.—Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

11. Property attached before judgment not to be re-attached in execution of decree.—Where property is under attachment by virtue of the provisions of this order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

12. Agricultural produce not attachable before judgment.—Nothing in this Order shall be

deemed to authorize the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

ORDER XXXIX.

Temporary Injunctions and Interlocutory Orders.

Temporary Injunctions.

1. Cases in which temporary injunction may be granted.—Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

2. Injunction to restrain repetition or continuance of breach.—(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the

defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of, a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

3. Before granting injunction Court to direct notice to opposite party.—The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

4. Order for injunction may be discharged, varied or set aside.—Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made, thereto by any party dissatisfied with such order.

5. Injunction to corporation binding on its officers.—An injunction directed to a corporation

is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Interlocutory Orders.

6. Power to order interim sale.—The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

7. Detention, preservation, inspection, etc., of subject-matter of suit.—(1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

- (a) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein ;
- (b) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit ; and
- (c) for all or any of the purposes aforesaid authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this rule.

8. Application for such orders to be after notice.—(1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

9. When party may be put in immediate possession of land the subject-matter of suit.—

Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure ;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Deposit of money, etc., in Court.—

Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other

thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

ORDER XL.

Appointment of Receivers.

1. Appointment of receivers—(1) Where it appears to the Court to be just and convenient, the Court may by order—

- (a) appoint a receiver of any property, whether before or after decree ;
- (b) remove any person from the possession or custody of the property ;
- (c) commit the same to the possession, custody or management of the receiver ; and
- (d) confer upon the receiver all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorize the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

2. Remuneration.—The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

3. Duties. Every receiver so appointed shall—

- (a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;
- (b) submit his accounts at such periods and in such form as the Court directs;
- (c) pay the amount due from him as the Court directs; and
- (d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

4. Enforcement of receiver's duties.—Where a receiver—

- (a) fails to submit his accounts at such periods and in such form as the Court directs, or
- (b) fails to pay the amount due from him as the Court directs, or
- (c) occasions loss to the property by his wilful default or gross negligence, the Court may direct his property to be attached and *may sell such property*, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

5. When Collector may be appointed receiver.—Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

ORDER XI-I.*Appeals from Original Decrees.*

1. Form of appeal. What to accompany memorandum.—(1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Contents of memorandum.—(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and such grounds shall be numbered consecutively.

2. Grounds which may be taken in appeal.—The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

3. Rejection of amendment of memorandum.—(1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

APPEALS FROM ORIGINAL DECREES.

(2) Where the Court rejects any memorandum, it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.—Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.

Stay of proceedings and of execution.

5. Stay by Appellate Court.—(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Court which passed the decree.—(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made ;
- (b) that the application has been made without unreasonable delay ; and
- (c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

6. Security in case of order for execution of decree appealed from.—Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

7. No security to be required from the Government or a public officer in certain cases.—No such security as is mentioned in rules 5 and 6

shall be required from the Secretary of State for India in Council or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

8. *Exercise of powers in appeal from order made in execution of decree.*—The powers conferred by rules 5 and 6 shall be exerciseable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal.

9. *Registry of memorandum of appeal.*—(1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of Appeals.—(2) Such book shall be called the Register of Appeals.

10. *Appellate Court may require appellant to furnish security for costs.*—(1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of British India.—Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

11. Power to dismiss appeal without sending notice to Lower Court.—(1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

12. Day for hearing appeal.—(1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

13. Appellate Court to give notice to Court whose decree appealed from.—(1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

Transmission of papers to Appellate Court.
—(2) Where the appeal is from the decree of a

Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Copies of exhibits in Court whose decree appealed from.—(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of, and given to, the applicant.

14. *Publication and service of notice of day for hearing appeal.*—(1) Notice of the day fixed under rule 12 shall be affixed in the appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may itself cause notice to be served.—(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

15. *Contents of notice.*—The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Procedure on

16. Right to begin—(1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

17. Dismissal of appeal for appellant's default.—(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Hearing appeal ex parte—(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.—Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed;

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

19. Re-admission of appeal dismissed for default.—Where an appeal is dismissed under rule

11, sub-rule (2), or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to costs or otherwise as it thinks fit.

20. Power to adjourn hearing and direct persons appearing interested to be made respondents.—Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day, to be fixed by the Court and direct that such person be made a respondent.

21. Re-hearing on application of respondent against whom *ex parte* decree made.—Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.—

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month

from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Form of objection and provisions applicable thereto.—(2) Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule.

23. *Remand of case by Appellate Court.*—Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any)

recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.

24. Where evidence on record sufficient, Appellate Court may determine case finally.—

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.—

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required ;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

26. Findings and evidence to be put on record. Objections to finding.—(1) Such evidence and findings shall form part of the record in the suit and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

Determination of appeal.—(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal.

27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

28. Mode of taking additional evidence.—Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

29. Points to be defined and recorded.—Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgment in appeal.

30. Judgment when and where pronounced.—The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

31. Contents, date and signature of judgment.—The judgment of the Appellate Court shall be in writing and shall state—

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

32. What judgment may direct.—The judgment may be for confirming, varying, or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

33. Power of Court of Appeal.—The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this

power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

Illustration.

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

34. Dissent to be recorded.—Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal and he may state his reasons for the same.

Decree in appeal.

35. Date and contents of decree.—(1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.—Provided that where there are more Judges than one and there is a difference of opinion

XLIII.] APPEALS FROM ORDERS.

among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

36. Copies of judgment and decree to be furnished to parties.—Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

37. Certified copy of decree to be sent to Court whose decree appealed from.—A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

ORDER XLII.

Appeals from Appellate Decrees.

1. Procedure.—The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

ORDER XLIII.

Appeals from Orders.

1. Appeals from orders.—An appeal shall lie from the following orders under the provisions of section 104, namely :—

- (a) An order under rule 10 of Order VII returning a plaint to be presented to the proper Court;

- (b) an order under rule 10 of Order VIII pronouncing judgment against a party ;
- (c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit.
- (d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed *ex parte*.
- (e) an order under rule 4 of Order X pronouncing judgment against a party ;
- (f) an order under rule 21 of Order XI ;
- (g) an order under rule 10 of Order XVI for the attachment of property ;
- (h) an order under rule 20 of Order XVI pronouncing judgment against a party ;
- (i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement ;
- (j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale ;
- (k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit ;
- (l) an order under rule 10 of Order XXII giving or refusing to give leave ;
- (m) an order under rule 3 of Order XXII recording or refusing to record an agreement, compromise or satisfaction ;
- (n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit ;

- (o) an order under rule 3 or rule 8 of Order XXXIV refusing to extend the time for the payment of mortgage-money;
- (p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;
- (q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;
- (r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX;
- (s) an order under rule 1 or rule 4 of Order XL;
- (t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;
- (u) an order rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;
- (v) an order made by any Court other than a High Court refusing the grant of a certificate under rule 6 of Order XLV;
- (w) an order under rule 4 of Order XLVII granting an application for review.

2. Procedure.—The rules of Order XLI shall apply, so far as may be, to appeals from orders.

ORDER XLIV.

Pauper Appeals.

1. Who may appeal as pauper.—Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeals and may be allowed to appeal as a pauper, subject, in all matters including

THE CODE OF CIVIL PROCEDURE.

the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable ;

Procedure on application for admission of appeal.—Provided that the Court shall reject the application unless, upon a perusal thereof and of judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

2. Inquiry into pauperism.—The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred :

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

ORDER XLV.

Appeals to the King in Council.

1. "Decree" defined.—In this Order, unless there is something repugnant in the subject or context, the expression "decree" shall include a final order.

2. Application to Court whose decree complained of.—Whoever desires to appeal to His Majesty in Council shall apply by petition to the Court whose decree is complained of.

3. Certificate as to value or fitness.—(1) Every petition shall state the grounds of appeal

APPEALS TO THE KING IN COUNCIL.

--- pray for a certificate either that, as regards amount or value and nature, the case fulfils the requirements of section 110, or that it is otherwise a fit one for appeal to His Majesty in Council.

(2) Upon receipt of such petition, the Court shall direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

4. Consolidation of suits.—For the purposes of pecuniary valuation, suits involving substantially the same questions for determination and decided by the same judgment may be consolidated: but suits decided by separate judgments shall not be consolidated, notwithstanding that they involve substantially the same questions for determination.

5. Remission of dispute to Court of first instance.—In the event of any dispute arising between the parties as to the amount or value of the subject-matter of the suit in the Court of first instance, or as to the amount or value of the subject matter in dispute on appeal to His Majesty in Council, the Court to which a petition for a certificate is made under rule 2 may, if it thinks fit, refer such dispute for report to the Court of first instance, which last mentioned Court shall proceed to determine such amount or value and shall return its report together with the evidence to the Court by which the reference was made.

6. Effect of refusal of certificate.—Where such certificate is refused, the petition shall be dismissed.

7. Security and deposit required on grant of certificate.—(1) Where the certificate is granted, the applicant shall, within six months from the date of the decree complained of, or within six

weeks from the date of the grant of the certificate, whichever is the later date,—

- (a) furnish security for the costs of the respondent, and
- (b) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to His Majesty in Council a correct copy of the whole record of the suit, except—
 - (1) formal documents directed to be excluded by any order of His Majesty in Council in force for the time being ;
 - (2) papers which the parties agree to exclude;
 - (3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included ; and
 - (4) such other documents as the High Court may direct to be excluded.

(2) Where the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in sub-rule (1), deposit the amount required to defray the expense of printing such copy.

8. Admission of appeal and procedure thereon.—Where such security has been furnished and deposit made to the satisfaction of the Court, the Court shall—

- (a) declare the appeal admitted,
- (b) give notice thereof to the respondent,
- (c) transmit to His Majesty in Council under the seal of the Court a correct copy of the said record, except as aforesaid, and

- (d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

9. *Revocation of acceptance of security.*—At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

10. *Power to order further security or payment.*—Where at any time after the admission of an appeal but before the transmission of the copy of the record, except as aforesaid, to His Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time, the required payment.

11. *Effect of failure to comply with order.*—Where the appellant fails to comply with such order, the proceedings shall be stayed,

and the appeal shall not proceed without an order in this behalf of His Majesty in Council, and in the meantime execution of the decree appealed from shall not be stayed.

12. *Refund of balance deposit.*—When the copy of the record, except as aforesaid, has been transmitted to His Majesty in Council, the appel-

lant may obtain a refund of the balance (if any) of the amount which he has deposited under rule 7.

13. Powers of Court pending appeal.—(1) Notwithstanding the grant of a certificate for the admission of any appeal, the decree appealed from shall be unconditionally executed, unless the Court otherwise directs.

(2) The Court may, if it thinks fit, on special cause shown by any party interested in the suit, or otherwise appearing to the Court,—

- (a) impound any moveable property in dispute or any part thereof, or
- (b) allow the decree appealed from to be executed, taking such security from the respondent as the Court thinks fit for the due performance of any order which His Majesty in Council may make on the appeal, or
- (c) stay the execution of the decree appealed from, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed from, or of any order which His Majesty in Council may make on the appeal, or
- (d) place any party seeking the assistance of the Court under such conditions or give such other direction respecting the subject-matter of the appeal, as it thinks fit, by the appointment of a receiver or otherwise.

14. Increase of security found inadequate.—(1) Where at any time during the pendency of the appeal the security furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

(2) In default of such further security being furnished as required by the Court,—

- (a) if the original security was furnished by the appellant, the Court may, on the application of the respondent, execute the decree appealed from as if the appellant had furnished no such security ;
- (b) if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay the further execution of the decree and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

15. Procedure to enforce orders of King in Council.—(1) Whoever desires to obtain execution of any order of His Majesty in Council shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to His Majesty was preferred.

(2) Such Court shall transmit the order of His Majesty in Council to the Court which passed the first decree appealed from, or to such other Court as His Majesty in Council by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same ; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

(3) When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed at the date of the making of the order by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of His Majesty's Treasury for the adjustment of financial transactions between the Imperial and the Indian Governments.

16: *Appeal from order relating to execution.*

—The orders made by the Court which executes the order of His Majesty in Council, relating to such execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the execution of its own decrees.

ORDER XLVI.

1. *Reference of question to High Court.*—

Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

2. *Court may pass decree contingent upon decision of High Court.*—The Court may either

stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred ;

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

3. Judgment of High Court to be transmitted, and case disposed of accordingly.—The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made ; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

4. Costs of reference to High Court.—The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

5. Power to alter, etc., decree of Court, making reference.—Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

6. Power to refer to High Court questions as to jurisdiction in small causes.—(1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so

cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

7. Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.—(1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

ORDER XLVII.

Review.

1. Application for review of judgment.—(1)
Any person considering himself aggrieved—

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed, or
- (c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

2. To whom applications for review may be made.—An application for review of a decree or order of a Court, not being a High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the

decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

3. Form of applications for review.—The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

4. Application where rejected.—(1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application where granted.—(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

- (a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for: and
- (b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5. Application for review in Court consisting of two or more Judges.—Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by

absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

6. Application where rejected.—(1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7. Order of rejection not appealable. Objections to order granting application.—(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

- (a) in contravention of the provisions of rule 2,
- (b) in contravention of the provisions of rule 4, or
- (c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hear-

ing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8. Registry of application granted, and order for re-hearing.—When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. Bar of certain applications.—No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

ORDER XLVIII.

Miscellaneous.

1. Process to be served at expense of party issuing.—(1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service.—(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

2. Orders and notices how served.—All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

3. Use of forms in appendices.—The forms given in the appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

ORDER XLIX.*Chartered High Courts.***1. Who may serve processes of High Court.—**

Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

2. Saving in respect of Chartered High Courts.—Nothing in this schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by a Chartered High Court.

3. Application of rules.—The following rules shall not apply to any Chartered High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:—

- (1) rule 10 and rule 11, clauses (b) and (g), of Order VII;
- (2) rule 3 of Order X;
- (3) rule 2 of Order XVI;
- (4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;
- (5) rules 1 to 8 of Order XX; and
- (6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);

and rule 35 of Order XLI shall not apply to any such High Court in the exercise of its appellate jurisdiction.

ORDER L.*Provincial Small Cause Courts.*

1. Provincial Small Cause Courts.—The provisions hereinafter specified shall not extend to Courts constituted under the Provincial Small Causes Courts Act, 1887, (IX of 1887), or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say—

- (a) so much of this schedule as relates to—
 - (i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;
 - (ii) the execution of decrees against immoveable property or the interest of a partner in partnership property;
 - (iii) the settlement of issues; and
- (b) the following rules and orders,—
 - Order II, r. 1 (frame of suit);
 - Order X, r. 3 (record of examination of parties);
 - Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;
 - Order XVIII rules 5 to 12 (evidence);
 - Orders XLI to XLV (appeals);
 - Order XLVII, rules 2, 3, 5, 6, 7 (review);
 - Order LI.

ORDER LI.*Presidency Small Cause Courts.*

Presidency Small Cause Courts.—(1) Save as provided in rules 22 and 23 of Order V, rules 4 and 7 of Order XXI, and rule 4 of Order XXVI, and by the Presidency Small Cause Courts Act, 1882, (XV of 1882), this schedule shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

(1) **TITLES OF SUITS.**

A. B. (add description and residence) ... Plaintiff,
against
C. D. (add description and residence) ... Defendant.

The Secretary of State for India in Council

The Advocate-General of

The Collector of

The State of

The A. B. Company. Limited, having its registered office at

A B., a public officer of the C. D. Company.

A. B. (add description and residence), on behalf of himself and all other creditors of C. D., late of (add description and residence).

A. B. (*add description and residence*), on behalf of himself and all other holders of debentures issued by the Company, Limited.

The Official Receiver.

A. B., a minor (*add description and residence*), by C. D. [*or by the Court of Wards*], his next friend.

A. B. (*add description and residence*), a person of unsound mind [*or of weak mind*], by C. D., his next friend.

A. B., a firm carrying on business in partnership at

A. B. (*add description and residence*), by his constituted attorney C. D. (*add description and residence*)

A. B. (*add description and residence*), Shebait of Thakur.

A. B. (*add description and residence*), executor of C. D., deceased.

A. B. (*add description and residence*), heir of C. D., deceased.

(3) PLAINTS.

No. 1.—MONEY LENT.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , he lent the defendant rupees repayable on the day of

2. The defendant has not paid the same, except rupees paid on the day of 19 .

[*If the plaintiff claims exemption from any law of limitation, say :—*]

3. The plaintiff was a minor [*or insane*] from the
 day of till the
 day of

4. [*Facts showing when the cause of action arose and that the Court has jurisdiction*]

5. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees
 and for the purpose of court-fees is rupees.

6. The plaintiff claims rupees, with
 interest at per cent. from the
 day of 19 .

NO. 2.—MONEY OVERPAID.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 ,
 the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per
 tola of fine silver.

2. The plaintiff procured the said bars to be assayed by *E. F.*, who was paid by the defendant for such assay, and *E. F.* declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant rupees.

3. Each of the said bars contained only 1,200 tolas of fine silver, of which fact the plaintiff was ignorant when he made the payment.

4. The defendant has not repaid the sum so overpaid.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

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No. 3.—GOODS SOLD AT A FIXED PRICE AND DELIVERED.
(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , *E.F.* sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the schedule hereto annexed, or sundry goods.]

2. The defendant promised to pay rupees for the said goods on delivery [*or* on the day of , *some day before the plaint was filed.*]

3. He has not paid the same.

4. *E.F.* died on the day of 19 . By his last will he appointed his brother, the plaintiff, his executor.

[*As in paras. 4 and 5 of Form No. 1.*]

7. The plaintiff as executor of *E.F.* claims [*Relief claimed*].

No. 4.—GOODS SOLD AT A REASONABLE PRICE
AND DELIVERED.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , plaintiff sold and delivered to the defendant [sundry articles of house-furniture], but no express agreement was made as to the price,

3. The goods were reasonably worth rupees.

3. The defendant has not paid the money.

[*As in paras. 4 and 5 of Form No. 1,
and Relief claimed*].

NO. 5.—GOODS MADE AT DEFENDANT'S REQUEST,
AND NOT ACCEPTED.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 ,
E. F. agreed with the plaintiff that the plaintiff
should make for him [*six tables and fifty chairs*],
and that E.F. should pay for the goods on delivery
rupees.

2. The plaintiff made the goods, and on the
 day of 19 offered to deliver
them to E. F. and has ever since been ready and
willing so to do.

3. E.F. has not accepted the goods or paid for
them.

[*As in paras. 4 and 5 of Form No. 1,
and Relief claimed.*]

NO. 6.—DEFICIENCY UPON A RE-SALE
[GOODS SOLD AT AUCTION].

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 ,
the plaintiff put up at auction sundry [*goods*],
subject to the condition that all goods not paid for
and removed by the purchaser within [*ten days*]
after the sale should be re-sold by auction on his
account, of which condition the defendant had
notice.

2. The defendant purchased [*one crate of crockery*]
at the auction at the price of .
rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [ten days] after.

4. The defendant did not take away the goods purchased by him, nor pay for them within [ten days] after the sale, nor afterwards.

5. On the day of 19 ,
the plaintiff re-sold the [crate of crockery], on
account of the defendant, by public auction, for
rupees.

6. The expenses attendant upon such resale
amounted to rupees.

7. The defendant has not paid the deficiency
thus arising, amounting to rupees.

[As in paras. 4 and 5 of Form No. 1,
and Relief claimed.]

NO. 7.—SERVICES AT A REASONABLE RATE.
(Title.)

A. B., the above-named plaintiff,
states as follows:—

1. Between the day of 19 ,
and the day of 19 , at
 , plaintiff [executed sundry drawings,
designs and diagrams] for the defendant, at his
request; but no express agreement was made as to
the sum to be paid for such services.

2. The services were reasonably worth
rupees.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1,
and .]

NO. 8.—SERVICES AND MATERIALS AT A
REASONABLE COST.

(Title)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , at
 , the plaintiff built a house [known as No.
 , in], and furnished the materials there-
for, for the defendant, at his request but no express
agreement was made as to the amount to be paid
for such work and materials.

2. The work done and materials supplied were
reasonably worth rupees

3. The defendant has not paid the money.

[As in paras. 3 and 4 of Form No. 1,
and Relief claimed.]

NO. 9.—USE AND OCCUPATION.

(Title.)

A.B., the above-named plaintiff, executor of the
will of X. Y., deceased, states as follows:—

1. That the defendant occupied the [house No.
 Street], by permission of the
said X. Y., from the day of
19 , until the day of 19 ,
and no agreement was made as to payment for the
use of the said premises.

2. That the use of the said premises for the said
period was reasonably worth rupees.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of form No. 1]

6. The plaintiff as executor of X. Y. claims [Relief
claimed].

No. 10.—ON AN AWARD.

(Title.)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , the plaintiff and defendant, having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E.F., and G.H., and the original document is annexed hereto.

2. On the day of 19 , the arbitrators awarded that the defendant should [pay the plaintiff rupees].

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1 and
Relief claimed.]

No. 11.—ON A FOREIGN JUDGMENT.

(Title.)

A.B., the above-named plaintiff, states as follows :—

1. On the day of 19 , at
in the State [or Kingdom], of ,
the Court of that State [or Kingdom],
in a suit therein pending between the plaintiff and
the defendant, duly adjudged that the defendant
should pay to the plaintiff rupees, with
interest from the said date.

2. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and
Relief claimed]

NO. 12.—AGAINST SURETY FOR PAYMENT OF RENT.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , E. F.,
hired from the plaintiff for the term of years,
the [house No. , Street], at the
annual rent of rupees, payable [monthly].

2. The defendant agreed, in consideration of the
letting of the premises to E. F., to guarantee the
punctual payment of the rent.

3. The rent for the month of 19 ,
amounting to rupees, has not been paid.

[If, by the terms of the agreement, notice is
to be given to the surety, add:—]

4. On the day of 19 , the
plaintiff gave notice to the defendant of the non-
payment of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[As in paras. 4 and 5 of Form No. 1, and
Relief claimed.]

NO. 13.—BREACH OF AGREEMENT TO PURCHASE LAND.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the
plaintiff and defendant entered into an agreement,
and the original document is hereto annexed.

[Or, on the day of 19 , the
plaintiff and defendant mutually agreed that the
plaintiff should sell to the defendant and that the
defendant should purchase from the plaintiff forty

highas of land in the village of for
rupees.]

2. On the day of 19 ,
the plaintiff, being then the absolute owner
of the property [and the same being free from all
incumbrances as was made to appear to the defend-
ant], tendered to the defendant a sufficient instru-
ment of transfer of the same [or, was ready and
willing, and is still ready and willing, and offered,
to transfer the same to the defendant by a sufficient
instrument] on the payment by the defendant of the
sum agreed upon.

3. The defendant has not paid the money.

[As in paras. 4 and 5 of Form No. 1, and
Relief claimed.]

No. 14.—NOT DELIVERING GOODS SOLD.

(Title)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the
plaintiff and defendant mutually agreed that the
defendant should deliver [one hundred barrels of
flour] to the plaintiff on the day of
19 .], and that the plaintiff should
pay therefor rupees on delivery.

2. On the [said] day the plaintiff was ready and
willing, and offered, to pay the defendant the said
sum upon delivery of the goods.

3. The defendant has not delivered the goods, and
the plaintiff has been deprived of the profits which
would have accrued to him from such delivery.

[As in paras. 4 and 5 of Form No. 1, and
Relief claimed.]

No. 15.—WRONGFUL DISMISSAL.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 ,
the plaintiff and defendant mutually agreed that
the plaintiff should serve the defendant as [an
accountant, or, in the capacity of foreman, or as the
case may be], and that the defendant should employ
the plaintiff as such for the term of [one year] and
pay him for his services rupees (monthly).

2. On the day of 19 ,
the plaintiff entered upon the service of the defen-
dant and has ever since been, and still is, ready and
willing to continue in such service during the
remainder of the said year whereof the defendant
always has had notice.

3. On the day of 19 ,
the defendant wrongfully discharged the plaintiff,
and refused to permit him to serve as aforesaid, or
to pay him for his services.

[As in paras. 4 and 5 of Form No. I, and
Relief claimed.]

No. 16.—BREACH OF CONTRACT TO SERVE.

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the
plaintiff and defendant mutually agreed that the
plaintiff should employ the defendant at an [annual]
salary of rupees, and that the defen-
dant should serve the plaintiff as [an artist] for the
term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the day of 19 , offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 19 , he refused to serve the plaintiff as aforesaid.

[*As in paras. 4 and 5 of Form No. 1, and
Relief claimed.*]

NO. 17.—AGAINST A BUILDER FOR
DEFECTIVE WORKMANSHIP.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [*Or state the tenor of the contract.*]

[2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

[*As in paras. 4 and 5 of Form No. 1, and
Relief claimed.*]

NO. 18.—ON A BOND FOR THE FIDELITY OF A CLERK.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff took E. F. into his employment as a clerk.

2. In consideration thereof on the day of 19 , the defendant agreed with the plaintiff that if E. F. should not faithfully perform

his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all monies, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

[Or, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of rupees, subject to the condition that if *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all monies, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[Or, 2. In consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the day of 19
and the day of 19 *E. F.* received
money and other property, amounting to the value
of rupees, for the use of the plaintiff,
for which sum he has not accounted to him, and the
same still remains due and unpaid.

[As in paras. 4 and 5 of Form No. 1, and
Relief claimed.]

NO. 19.—BY TENANT AGAINST LANDLORD,
WITH SPECIAL DAMAGE.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant, by a registered instrument, let to the plaintiff
[the house No. , Street] for the term

of years contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain his suit.

3. On the day of during the said term, *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal].

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

NO. 20.—ON AN AGREEMENT OF INDEMNITY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant, being partners in trade under the style of *A. B.* and *C. D.*, dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the day of 19 , [a judgment was recovered against the plaintiff and

defendant by *E. F.*, in the High Court of Judicature at _____, upon a debt due from the firm to *E. F.*, and on the _____ day of _____ 19 _____,] the plaintiff paid _____ rupees [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

NO. 21.—PROCURING PROPERTY BY FRAUD.

(Title).

A.B., the above-named plaintiff, states as follows:—

1. On the _____ day of _____ 19 _____, the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he the defendant, was solvent, and worth _____ rupees over all his liabilities.]

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of _____ rupees.

3. The said representations were false [or, state the particular falsehoods] and were then known by the defendant to be so.

4 The defendant has not paid for the goods. [Or, if the goods were not delivered], The plaintiff, in preparing and shipping the goods and procuring their restoration, expended _____ rupees.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 22.—FRAUDULENTLY PROCURING CREDIT TO BE
GIVEN TO ANOTHER PERSON.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant represented to the plaintiff that E. F. was solvent and in good credit, and worth rupees over all his liabilities [or, that E. F., then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. The plaintiff was thereby induced to sell to E. F. [rice] of the value of rupees [on months credit].

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [or, to deceive and injure the plaintiff].

E. F. [did not pay for the said goods at the expiration of the credit aforesaid, or] has not paid for the said rice, and the plaintiff has wholly lost the same.

[As in paras. 4 and 5 of Form No. 1, and
Relief claimed.]

No. 23.—POLLUTING THE WATER UNDER
THE PLAINTIFF'S LAND.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in , and of a well therein, and of water in the well, and was entitled to the use and

benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the day of 19 , the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

*[As in paras. 4 and 5 of Form No. 1, and
Relief claimed.]*

No. 24.—CARRYING ON A NOXIOUS MANUFACTURE.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called , situate in .

2. Ever since the day of 19 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and livestock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[As in paras. 4 and 5 of Form No. 1, and
Relief claimed.]

No. 25.—OBSTRUCTING A RIGHT OF WAY.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servant [with vehicles, or, on foot] at all times of the year.

3. On the _____ day of _____ 19____, defendant wrongfully obstructed the said way so that the plaintiff could not pass [with vehicles, or, on foot, or, in any manner] along the way [and has ever since wrongfully obstructed the same].

4. (State special damage if any.)

[As in paras. 4 and 5 of Form No. 1, and
Relief claimed.]

No. 26.—OBSTRUCTING A HIGHWAY.

(Title.)

1. The defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from _____ to _____ so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones[or, into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[As in paras. 4 and 5 of Form No. 1 and Relief claimed.]

No. 27.—DIVERTING A WATER-COURSE.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of .

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the day of 19 , the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 28 — OBSTRUCTING A RIGHT TO USE WATER
FOR IRRIGATION.

(Title)

A.B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the day of 19 ,
the defendant prevented the plaintiff from taking
and using the said portion of the said water as
aforesaid, by wrongfully obstructing and diverting
the said stream.

[As in paras 4 and 5 of Form No. 1, and
Relief claimed.]

No. 29.—INJURIES CAUSED BY NEGLIGENCE
ON A RAILROAD.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 ,
the defendants were common carriers of passengers
by railway between and .

2. On that day the plaintiff was a passenger in
one of the carriages of the defendants on the said
railway.

3. While he was such passenger, at
[or, near the station of or, between the
stations of and], a collision
occured on the said railway, caused by the negli-
gence and unskilfulness of the defendants' servants,
whereby the plaintiff was much injured [having
his leg broken, his head cut, etc., and state the

special damage, if any, as], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as[a salesman].

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

[*Or thus:—*2. On that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing that the said engine and train were driven and struck against the plaintiff, whereby, etc., *as in para. 3.*]

No. 30.—INJURIES CAUSED BY NEGLIGENT DRIVING.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at . The defendant is a merchant of .

2. On the day of , 19 , the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants, was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the

plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed].

No. 31.—FOR MALICIOUS PROSECUTION.

(Title)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 ,
the defendant obtained a warrant of arrest from
[a Magistrate of the said city, or as the case may be]
on a charge of , and the
plaintiff was arrested thereon, and imprisoned for
[days, or, hours,
and gave bail in the sum of
rupees to obtain his release].

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the day of 19 , the
Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; or, in consequence of the said

arrest, the plaintiff lost his situation as clerk to one *E.F.*; or, in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[*As in paras. 4 and 5 of Form No. 1, and Relief claimed.*]

No. 32.—MOVEABLES WRONGFULLY DETAINED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. On the day of 19 ,
plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods,*] the estimated value of which is rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit on the day of 19 ,
the plaintiff demanded the same from the defendant, but he refused to deliver them.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

- (1) delivery of the said goods, or
rupees, in case delivery cannot be had;
- (2) rupees compensation for the detention thereof.

The Schedule.

**No. 33.—AGAINST A FRAUDULENT PURCHASER AND
HIS TRANSFEREE WITH NOTICE.**

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 ,
the defendant C. D., for the purpose of inducing the
plaintiff to sell him certain goods, represented to
the plaintiff that [he was solvent, and worth
rupees over all his liabilities].

2. The plaintiff was hereby induced to sell
and deliver to C. D., [one hundred boxes of tea], the
estimated value of which is rupees.

3. The said representations were false, and
were then known by C. D. to be so, [or, at the time
of making the said representations, C. D. was in-
solvent, and knew himself to be so].

4. C. D. afterwards transferred the said goods
to the defendant E. F. without consideration [or,
who had notice of the falsity of the representation].

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims—

- (1) delivery of the said goods, or
rupees, in case delivery cannot be had
- (2) rupees compensation for the deten-
tion thereof.

**No. 34.—RESCISSON OF A CONTRACT ON THE
GROUND OF MISTAKE.**

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 ,
the defendant represented to the plaintiff that a
certain piece of ground belonging to the defendant,
situated at , contained [ten bighas].

2. The plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an agreement, of which the original is hereto annexed. But the land has not been transferred to him.

3. On the day of 19 the plaintiff paid the defendant rupees as part of the purchase-money.

4. That the said piece of ground contained in fact only [five bighas].

[As in paras. 4 and 5 of Form No. 1.]

7. The plaintiff claims—

(1) rupees, with interest from
the day of 19 ; .

(2) that the said agreement be delivered up and cancelled.

No. 35.—AN INJUNCTION RESTRAINING WASTE.

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. The plaintiff is the absolute owner of [*describe the property*].

2. The defendant is in possession of the same under a lease from the plaintiff.

3. The defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation may also be*

No. 36.—INJUNCTION RESTRAINING NUISANCE.

(Title).

A.B., the above-named plaintiff states as follows:—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. , Street, Calcutta].

2. The defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].

On the day of 19 , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

3. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.

[As in paras. 4 and 5 of Form No. 1.]

The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

No. 37.—PUBLIC NUISANCE.

(Title)

A B., the above-named plaintiff, states as follows:—

1. The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. The plaintiff have obtained the consent in writing of the Advocate-General [or of the Collector or other officer appointed in this behalf] to the institution of this suit.

[As in paras. 4 and 5 of Form No. 1.]

The plaintiff claims—

- (1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road :
 - (2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.
-

No. 38.—INJUNCTION AGAINST THE DIVERSION OF A
WATER-COURSE.

(Title.)

A.B., the above-named plaintiff, states as follows:—

[As in form No. 27.]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 39.—RESTORATION OF MOVEABLE PROPERTY
THREATENED WITH DESTRUCTION, AND FOR AN
INJUNCTION.

(Title.)

A.B., the above-named plaintiff, states as follows :—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [or, state any facts

showing that the property is of a kind that cannot be replaced by money].

2. On the day of 19 , he deposited the same for safe-keeping with the defendant.

3. On the day of 19 , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims—

- (1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting];
- (2) that he be compelled to deliver the same to the plaintiff.

No. 40.—INTERPLEADER.

A.B., the above-named plaintiff, states as follows:—

1. Before the date of the claims hereinafter mentioned G.H. deposited with the plaintiff [*describe the property*] for [safe-keeping].

2. The defendant C.D. claims the same [under an alleged assignment thereof to him from G. H.]

3. The defendant E.F. also claims the same [under an order of G.H. transferring the same to him].

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is not brought by collusion with either of the defendants.

[*As in paragraphs 4 and 5 of Form No. 1.*]

9. The plaintiff claims—

- (1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto ;
- (2) that they be required to interplead together concerning their claims to the said property ;
- [(3) that some person be authorized to receive the said property pending such litigation ;]
- (4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

**No. 41.—ADMINISTRATION BY CREDITOR ON BEHALF
OF HIMSELF AND ALL OTHER CREDITORS.**

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. E.F., late of _____, was at the time of his death and his estate still is, indebted to the plaintiff in the sum of _____ [*here insert nature of debt and security, if any*].

2. E.F., died on or about the _____ day of _____ . By his last will, dated the _____ day of _____, he appointed C.D. his executor

[or devised his estate in trust, etc., or, died intestate, as the case may be].

3. The will was proved by C. D. [or letters of administration were granted, etc.].

4. The defendant has possessed himself of the moveable [and immoveable, or the proceeds of the immoveable] property of E.F., and has not paid the plaintiff his debt.

[As in paras. 4 and 5 of Form No. 1].

7. The plaintiff claims that an account may be taken of the moveable [and immoveable] property of E.F., deceased, and that the same may be administered under the decree of the Court.

No. 42.—ADMINISTRATION BY SPECIFIC LEGATEE.

[Title.]

[Alter Form No. 41 thus]—

[Omit paragraph 1 and commence paragraph 2]
E.F., late of , died on or about the
day of . By his last will, dated the
day of he appointed C.D. his executor, and
bequeathed to the plaintiff [here state the specific
legacy].

For paragraph 4 substitute—

The defendant is in possession of the moveable property of E.F., and, amongst other things, of the said [here name the subject of the specific bequest].

For the commencement of paragraph 7 substitute—

The plaintiff claims that the defendant may be ordered to deliver to him the said [here name the subject of the specific bequest] or that, etc.

No. 43.—ADMINISTRATION BY PECUNIARY LEGATEE.

(Title.)

[Alter Form No. 41 thus]—

[Omit paragraph 1 and substitute for paragraph 2]

E.F., late of _____, died on or about the _____ day of _____. By his last will, dated the _____ day of _____, he appointed *C.D.* his executor, and bequeathed to the plaintiff a legacy of _____ rupees.

In paragraph 4 substitute "legacy" for "debt."

Another form.

(Title.)

E.F., the above-named plaintiff, states as follows:—

1. *A.B.* of *K.* in the _____ died on the _____ day of _____. By his last will, dated the _____ day of _____, he appointed the defendant and *M.N.* [who died in the testator's lifetime] his executors, and bequeathed his property, whether moveable or immoveable, to his executors in trust to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the person who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The will was proved by the defendant on the _____ day of _____. The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property ; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property ; he has sold some part of the immoveable property.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff claims—

- (1) to have the moveable and immoveable property of *A.B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken ;
- (2) such further or other relief as the nature of the case may require.

NO. 44.—EXECUTION OF TRUSTS.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. He is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of *E.F.* and *G.H.*, the father and mother of the defendant [*or an instrument of transfer of the estate and effects of E.F. for the benefit of C.D., the defendant, and the other creditors of E.F.*]

2. *A.B.* has taken upon himself the burden of the said trust, and is in possession of [*or of the proceeds of*] the moveable and immoveable property transferred by the said instrument,

3. *C.D.* claims to be entitled to a beneficial interest under the instrument.

[*As in paras. 4 and 5 of Form No. 1.*]

6. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, or of part of the said, immoveable property, or moveable, or the proceeds of the sale of, or of part of, the said moveable property, or the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of *C.D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C.D.*, and such other persons so interested as the Court may direct, or that *C.D.* may show good cause to the contrary.

[*N.B.*—Where the suit is by a beneficiary, the plaint may be modelled, *mutatis mutandis*, on the plaint by a legatee.]

No 45.—FORECLOSURE OR SALE.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:—

- (a) (date);
- (b) (names of mortgagor and mortgagee);
- (c) (sum secured);
- (d) (rate of interest);
- (e) (property subject to mortgage);
- (f) (amount now due);
- (g) (*if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims.*

(*If the plaintiff is mortgagee in possession, add*)

3. The plaintiff took possession of the mortgaged property on the _____ day of _____ and is ready to account as mortgagee in possession from that time.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims :—

(1) payment, or in default [sale or] foreclosure [and possession];

[Where Order 34 rule 6, applies.]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

No. 46.—REDEMPTION.

(Title.)

A.B., the above-named plaintiff, states as follows :—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage :—

- (a) (date);
- (b) (names of mortgagor and mortgagee);
- (c) (sum secured);
- (d) (rate of interest);
- (e) (property subject to mortgage);
- (f) (if the plaintiff's title is derivative, state shortly the transfers or devolution under which he claims.

(If the defendant is mortgagee in possession, add)

3. The defendant has taken possession [or has received the rents] of the mortgaged property.

[As in paragraphs 4 and 5 of Form No. 1]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof].

No. 47.—SPECIFIC PERFORMANCE (No. 1).

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. By an agreement dated the day of and signed by the defendant, he contracted to buy of [or, sell to] the plaintiff certain immoveable property therein described and referred to, for the sum of rupees.

2 The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[As in paras. 4 and 5 of Form No. 1.]

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [or to accept a transfer and possession of the said property] and to pay the costs of the suit.

No. 48.—SPECIFIC PERFORMANCE (No. 2).

(Title.)

A.B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immoveable property described in the agreement.

2. On the day of 19 , the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the day of 19 , the plaintiff again demanded such transfer [*or the defendant refused to transfer the same to the plaintiff.*]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[*As in paras. 4 and 5 of Form No. 1.*]

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*];

(2) rupees compensation for withholding the same.

NO. 49.—PARTNERSHIP.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. He and C.D., the defendant, have been for years [*or months*] past carrying on business together under articles of partnership in writing, [*or under a deed, or under a verbal agreement*].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the

partners. [Or the defendant has committed the following breaches of the partnership articles:—

- (1)
- (2)
- (3)]

[As in paras. 4 and 5 of Form No. 1.]

5. The plaintiff claims —

- (1) dissolution of the partnership ;
- (2) that accounts be taken ;
- (3) that a receiver be appointed.

(N.B.—In suits for the winding-up of any partnership, omit the claim for dissolution ; and instead insert a paragraph stating the facts of the partnership having been dissolved.)

(4) WRITTEN STATEMENTS.

General defences.

Denial.—The defendant denies that (*set out facts*).

The defendant does not admit that (*set out facts*).

The defendant admits that but says that

Protest.—The defendant denies that he is a partner in the defendant firm of

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

Limitation.—The suit is barred by article or article of the second schedule to the Indian Limitation Act, 1877.

Jurisdiction.—The Court has no jurisdiction to hear the suit on the ground that (*set forth the grounds*).

On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency.—The defendant has been adjudged an insolvent.

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

Minority.—The defendant was a minor at the time of making the alleged contract.

Payment into Court.—The defendant as to the whole claim (or as to Rs. part of the money claimed, or as the case may be) has paid into Court Rs. and says that this sum is enough to satisfy the plaintiff's claim (or the part aforesaid).

Performance remitted.—The performance of the promise alleged was remitted on the (date).

Rescission.—The contract was rescinded by agreement between the plaintiff and defendant.

Res judicata.—The plaintiff's claim is barred by the decree in suit (*give the reference*).

Estoppel.—The plaintiff is estopped from denying the truth of (*insert statement as to which estoppel is claimed*) because (*here state the facts relied on as creating the estoppel*).

Ground of defence subsequent to institution of suit.—Since the institution of the suit, that is to say, on the day of (*set out facts*).

NO. 1.—DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not Rs.

[or]

4.)
5. } Except as to Rs. , same as .
6. }

7. The defendant [or A.B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff [or to C.D., the plaintiff's agent] on the day of 19 .

8. The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19 .

NO. 2.—DEFENCE IN SUITS ON BONDS.

1. The bond is not the defendant's bond.
2. The defendant made payment to the plaintiff on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

NO. 3.—DEFENCE IN SUITS ON GUARANTEES.

1. The principal satisfied the claim by payment before suit.
2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

NO. 4.—DEFENCE IN ANY SUIT FOR DEBT.

1. As to Rs. 200 of the money claimed the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:—			Rs.
1907, January 25th...	150
" February 1st	50
Total ...			200

2. As to the whole [or as to Rs. part of the money claimed] the defendant made tender before suit of Rs. , and has paid the same into Court.

NO. 5.—DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to of Street, Calcutta, livery stable keepers employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said .

2. The defendant does not admit that the said carriage was turned out of Middleton Street, either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6.—DEFENCE IN ALL SUITS FOR WRONGS.

1. Denial of the several acts [or, matters] complained of.

No. 7.—DEFENCE IN SUITS FOR DETENTION OF GOODS.

1. The goods were not the property of the plaintiff.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows :—

1907, May 3rd. To carriage of the goods claimed from Delhi to Calcutta :—

45 maunds at Rs. 2 per maund. Rs. 90.

No. 8.—DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT.

1. The plaintiff is not the author [*assignee, etc.*]

2. The book was not registered.

3. The defendant did not infringe.

No. 9.—DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK.

1. The trade mark is not the plaintiff's.

2. The alleged trade mark is not a trade mark.

3. The defendant did not infringe.

No. 10.—DEFENCES IN SUITS RELATING TO NUISANCES.

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [or do what is complained of].

[If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of the claim, i. e., whether by prescription, grant or what.]

4. The plaintiff has been guilty of laches of which the following are particulars :—

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damages to the plaintiff. [If other grounds are relied on, they must be stated, e. g., limitation as to past damage.]

No. 11.—DEFENCE TO SUIT FOR FORECLOSURE.

1. The defendant did not execute the mortgage.

2. The mortgage was not transferred to the plaintiff (if more than one transfer is alleged, say which is denied).

3. The suit is barred by article _____ of the second schedule to the Indian Limitation Act, 1877.

4. The following payments have been made, viz :—

	Rs.
(Insert date.)———, 	1,000
(Insert date.)———, 	500

5. The plaintiff took possession on the _____ of _____, and has received the rents ever since.

6. That plaintiff released the debt on the _____ of _____.

7. The defendant transferred all his interest to A. B. by a document, dated

No. 12.—DEFENCE TO SUIT FOR REDEMPTION.

1. The plaintiff's right to redeem is barred by article of the second schedule to the Indian Limitation Act, 1877.

2. The plaintiff transferred all interest in the property to A. B.

3. The defendant, by a document dated the day of transferred all his interest in the mortgage-debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

(If the defendant admits possession for a time only, he should state time, and deny possession beyond what he admits.)

No. 13.—DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE.

1. The defendant did not enter into the agreement.

2. A.B. was not the agent of the defendant (*if alleged by plaintiff*).

3. The plaintiff has not performed the following conditions—(*Conditions*).

4. The defendant did not—(*alleged acts of part performance*).

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reasons of the following matter—(*State why*).

6. The agreement is uncertain in the following respects—(*State them*).

7. (or) The plaintiff has been guilty of delay ;
8. (or) The plaintiff has been guilty of fraud (or misrepresentation).
9. (or) The agreement is unfair ;
10. (or) The agreement was entered into by mistake.
11. The following are particulars of (7), (8), (9), (10), (or as the case may be).
12. The agreement was rescinded under Conditions of Sale, No. 11 (or, by mutual agreement).

(In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches or show whatever other ground of defence he intends to rely on, e.g., the Indian Limitation Act, accord and satisfaction, release, fraud, etc).

No. 14.—DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE.

1. A.B.'s will contained a charge of debts ; he died insolvent ; he was entitled at his death to some immoveable property which the defendant sold and which produced the net sum of Rs. , and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs.

2. The defendant applied the whole of the said sums and the sum of Rs. which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the day of 19 , and offered the plaintiff free

access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 15.—PROBATE OF WILL IN SOLEMN FORM.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the Indian Succession Act, 1865 [or of the Hindu Wills Act, 1870].

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge, being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, [*or of the contents of the residuary clause in the said will, as the case may be*].

6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims:—

(1) That the Court will pronounce against the said will and codicil propounded by the plaintiff.

(2) That the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

No. 16.—PARTICULARS (O. 6, r. 5).

(Title of suit).

Particulars.

The following are the particulars of *(here state the matters in respect of which particulars have been ordered)* delivered pursuant to the order of the
of

(Here set out the particulars ordered in paragraphs if necessary.)

APPENDIX. B.

PROCESS.

No 1.—SUMMONS FOR DISPOSAL OF SUIT.

(O. 5, rr. 1, 5).

(Title.)

To

[Name, description and place of residence.]

WHEREAS

has instituted a suit against you for
you are hereby summoned to appear in this Court
in person or by a pleader duly instructed, and able
to answer all material questions relating to the suit,
or who shall be accompanied by some person able
to answer all such questions, on the
day of 19 , at o'clock in the
noon, to answer the claim; and as the
day fixed for your appearance is appointed for the
final disposal of the suit, you must be prepared to
produce on that day all the witnesses upon whose
evidence and all the documents upon which you
intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence. -

GIVEN under my hand and the seal of the Court,
this
day of 19 .

Judge.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

NO. 2. SUMMONS FOR SETTLEMENT OF

(O. 5, rr. 1, 5.)

(Title.)

To

[Name, description and place of residence.]

WHEREAS

has instituted a suit against you for
you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the
day of 19 , at o'clock in the
noon, to answer the claim; and you
are directed to produce on that day all the docu-

ments upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court,
this
day of 19 .

Judge.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

No. 3. SUMMONS TO APPEAR IN PERSON. (O. 5, r. 3.)

(Title.)

To

[*Name, description and place of residence.*]

WHEREAS

has instituted a suit against you for
you are hereby summoned to appear in this Court
in person on the day of
19 , at o'clock in the noon, to answer the claim ; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court,
this
day of 19 .

Judge.

No. 4. SUMMONS IN SUMMARY SUIT ON NEGOTIABLE
INSTRUMENT. (O. 37, r. 2.)

(Title.)

To

[Name description and place of residence.]

WHEREAS has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs , balance of principal and interest due to him as the of a of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

GIVEN under my hand and the seal of the Court,
this
day of 19 .

Judge.

NO. 5.—NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF. (O. I, r. 10).

(Title.)

To

[Name, description and place of residence.]

WHEREAS has instituted the above
suit against for
and whereas it appears necessary that you should
be added as a plaintiff in the said suit in order to
enable the Court effectually and completely to
adjudicate upon and settle all the question involved:

Take notice that you should on or before
day of 19 signify to this Court,
whether you consent to be so added

GIVEN under my hand and the seal of the Court
this _____ day of _____ 19__.

Judge.

NO. 6.—SUMMONS TO REPRESENTATIVE OF A
DECEASED DEFENDANT. (O. 22, r. 4.)

(Title.)

To

WHEREAS the plaintiff
instituted a suit in this Court on the
day of 19 against the
defendant who has since deceased, and
whereas the said plaintiff has made an application
to this Court alleging that you are the legal re-
presentative of the said deceased,
and desiring that you be made the defendant in his
stead :

You are hereby summoned to attend in this Court
on the day of 19 at A.M.
to defend the said suit, and, in default of your

appearance on the day specified, the said suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

NO. 7.—ORDER FOR TRANSMISSION OF SUMMONS
FOR SERVICE IN THE JURISDICTION OF ANOTHER
COURT. (O. 5, r. 21.)

(Title.)

WHEREAS it is stated that
 defendant.
 witness in the above suit is at present
residing in : It is ordered that
a summons returnable on the day of
 19 , be forwarded to the
 Court of for service on the
said defendant
 witness with a duplicate of this proceeding.

The court-fee of chargeable in respect to the
summons has been realized in the Court in stamps.

Dated 19 .

Judge.

NO. 8.—ORDER FOR TRANSMISSION OF SUMMONS
TO BE SERVED ON A PRISONER. (O. 5, r. 24.)

(Title.)

To

The Superintendent of the Jail at

UNDER the provisions of Order V, rule 24, of the
Code of Civil Procedure, 1908, a summons in
duplicate is herewith forwarded for service on the
defendant who is
a prisoner in jail. You are requested to cause a

THE CODE OF CIVIL PROCEDURE. [App. B.]

copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge.

NO. 9.—ORDER FOR TRANSMISSION OF SUMMONS
TO BE SERVED ON A PUBLIC SERVANT OR
SOLDIER (O. 5, rr. 27, 28.)

(Title.)

To

UNDER the provisions of Order V, rule 27 (or 28 as the case may be), of the Code of Civil Procedure, 1908, a summons in duplicate is herewith forwarded for service on the defendant

who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

Judge.

NO. 10.—TO ACCOMPANY RETURNS OF SUMMONS
OF ANOTHER COURT. (O. 5, r. 23.)

(Title.)

Read proceeding from the
forwarding

for service on _____ in Suit No.
of 19 _____ of that Court.

Read Serving Officer's endorsement stating that
the _____ and proof of the above having
been duly taken by me on the oath of

and it is ordered that the
be returned to the
with a copy of this proceeding.

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

NO. 11.—AFFIDAVIT OF PROCESS-SERVER TO ACCOMPANY
RETURN OF A SUMMONS OR NOTICE (O. 5, r. 18.)

(Title.)

The Affidavit of son of
I make oath
affirm

and say as follows:—

(1) I am a process-server of this Court.

(2) On the day of 19 I received a
summons
notice issued by the Court of

in Suit No.

of 19 in the said Court, dated the
day of 19 for service on

(3) The said was at the
time personally known to me, and I served the
said summons him
notice her on the day of

19 at about o' clock in the
noon at by tendering a copy thereof to
him
her and requiring his
her signature to the original summons
notice

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said not being personally known to me accompanied to and pointed out to me a person whom he stated to be the said

, and I served the said ^{summons} _{notice} on ^{him} _{her} on the _____ day of _____ 19____, at about _____ o'clock in the _____ noon at _____ by tendering a copy thereof to ^{him} _{her} and requiring ^{his} _{her} signature to the original ^{summons} _{notice}.

(a)

(b)

(a) Here state whether the person served signed or refused to sign the process, and in whose presence.

(b) Signature of process-server.

or,

(3) The said _____ and the house in which he ordinarily resides being personally known to me, I went to the said house, in _____ and there on the _____ day of _____ 19____, at about _____ o'clock in the _____ noon, I did not find the said

(a)

(b)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(b) Signature of process-server.

or,

(3) One _____ accompanied me to _____ and there pointed out to me _____ which he said was the house in which _____ ordinarily resides. I did not find the said _____ there,

(a)

(a) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 16 and 17.

(b) Signature of process-server.

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn
Affirmed by the said before
me this day of 19 .
Empowered under
section 139 of the Code of Civil Procedure
to administer the oath to deponents.

No. 12.—NOTICE TO DEFENDANT. (O. 9, r. 6.)

(Title.)

(Name, description and place of residence.)

To

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons;

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the

day of 19 is now fixed for the hearing of the same; in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

**No. 14.—PROCLAMATION REQUIRING ATTENDANCE
OF WITNESS. (O. 16, r. 10.)**

(Title.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law: and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued requiring the attendance of the witness in this Court on the

day of 19 at
o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court,
this day of 19
Judge.

**No. 15.—PROCLAMATION REQUIRING ATTENDANCE
OF WITNESS. (O. 16, r. 10.)**

(Title.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1908, issued, requiring the attend-

service of a summons] ; You are hereby ordered to arrest and bring the said before the Court.

You are further ordered to return this warrant on or before the day of 19

with an endorsement certifying the day on and the manner in which it has been executed or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

NO. 18.—WARRANT OF COMMITTAL. (O. 16, r. 16.)

(*Title.*)

To

The Officer in charge of the Jail at

WHEREAS the plaintiff (or defendant) in the above-named suit has made application to this Court that security be taken for the appearance of evidence (or to produce a document), on the

day of 19 ; and whereas the Court has called upon the said to furnish such security, which he has failed to do ; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this day of 19 .

• *Judge.*

No. 19.—WARRANT OF COMMITTAL. (O. 16, r. 18.)

(Title.)

To

The Officer in charge of the Jail at

WHEREAS , whose attendance is required before the Court in the above-named case to give evidence (or to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (or defendant), the said cannot give such evidence (or produce such document); and whereas the Court has called upon the said

to give security for his appearance on the day of 19 , at which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19.

Judge

APPENDIX C.

DISCOVERY, INSPECTION
AND ADMISSION.No. 1. ORDER FOR DELIVERY OF INTERROGATORIES.
(O. 11, r. 1.)

In the Court of

Civil Suit No. of 19 .

A.B. Plaintiff,
against

C. D., E. F. and G. H. Defendants.

Upon hearing and upon reading the
affidavit of filed the day of
19 ; It is ordered that the be
at liberty to deliver to the interrogatories
in writing, and that the said do
answer the interrogatories as prescribed by Order
XI, rule 8, and that the costs of this application be

No. 2.—INTERROGATORIES. (O. 11, r. 4.)

(Title as in No. 1, *supra*.)

Interrogatories on behalf of the above-named
[Plaintiff or defendant C. D.] for the examination of
the above-named [defendants E. F. and G. H. or
plaintiff].

1. Did not, etc.

2. Has not, etc.

etc., etc , etc.

[The defendant E. F. is required to answer the
interrogatories numbered .]

[The defendant G. H. is required to answer the
interrogatories numbered .]

No. 3.—ANSWER TO INTERROGATORIES. (O. 11, r. 9.)

(Title as in No. 1, *supra*.)

The answer of the above-named defendant E. F.
to the interrogatories for his examination by the
above-named plaintiff.

In answer to the said interrogatories, I, the above-
named E. F., make oath and say as follows:—

1.) Enter answers to interrogatories in para-

2.) graphs numbered consecutively.

3. I object to answer the interrogatories number-
ed on the ground that [*state grounds of
objection*].

No. 4.—ORDER FOR AFFIDAVIT AS TO DOCUMENTS.
(O. 11, r. 12.)

(Title as in No. 1. *supra*.)

Upon hearing
It is ordered that the do within days
from the date of this order, answer on affidavit
stating which documents are or have been in his
possession or power relating to the matter in ques-
tion in this suit and that the costs of this applica-
tion be

No. 5.—AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 13.)

(Title as in No. 1 *supra*.)

I, the above-named defendant C. D., make oath
and say as follows:—

1. I have in my possession or power the docu-
ments relating to the matters in question in this
suit set forth in the first and second parts of the
first schedule hereto.

2. I object to produce the said documents set
forth in the second part of the first schedule hereto
[*state grounds of objection*].

3. I have had, but have not now, in my possession
or power the documents relating to the matters in
question in this suit set forth in the second schedule
hereto.

4. The last-mentioned documents were last in
my possession or power on [*state when and what has
become of them, and in whose possession they now are*].

5. According to the best of my knowledge, infor-
mation and belief I have not now, and never had,
in my possession, custody or power, or in the
possession, custody or power of my pleader or agent,
or in the possession, custody or power of any

other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum, paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them, or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 6.—ORDER TO PRODUCE DOCUMENTS FOR INSPECTION
(O. 11, r. 14.)

(*Title as in No. 1, supra.*)

Upon hearing _____ and upon reading
the affidavit of _____ filed the
day of _____ 19 ____; It is ordered that the
_____, do, at all seasonable times, on reasonable
notice, produce at _____, situate at
_____, the following documents, namely,
and that the _____ be at liberty
to inspect and peruse the documents so produced,
and to make notes of their contents. In the mean-
time it is ordered that all further proceedings be
stayed and that the costs of this application be

No. 7.—NOTICE TO PRODUCE DOCUMENTS. (O. 11, r. 16.)

(*Title as in No. 1, supra.*)

Take notice that the [*plaintiff or defendant*] re-
quires you to produce for his inspection the follow-
ing documents referred to in your [*plaint or*
written statement or affidavit] dated the
_____ day of _____ 19 ____.

[*Describe documents required.*]

X. Y., *Pleader for the* _____.

To Z., *Pleader for the* _____.

No. 8.—NOTICE TO INSPECT DOCUMENTS. (O.11, r. 17.)

(Title as in No. 1, *supra*.)

Take notice that you can inspect the documents mentioned in your notice of the day of 19 [*except the documents numbered in that notice*] at [*insert place of inspection*] on Thursday next, the instant, between the hours of 12 and 4 o'clock.

Or that the [*plaintiff or defendant*] objects to giving you inspection of documents mentioned in your notice of the day of 19 , on the ground that [*state the ground*] :—

No. 9.—NOTICE TO ADMIT DOCUMENTS. (O. 12, r. 3.)

(Title as in No. 1, *supra*.)

Take notice that the plaintiff [*or defendant*] in this suit proposes to adduce in evidencet he several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his pleader or agent, at on between the hours of and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively, saving all just exceptions to the admissibility of all such documents as evidence in this suit.

G. H., *Pleader* [*or agent*] for plaintiff [*or defendant*].

To E. F., *pleader* [or *agent*] for defendant [or plaintiff].

[*Here describe the documents and specify as to such document whether it is original or a copy.*]

No. 10.—NOTICE TO ADMIT FACTS. (O. 12, r. 5.)

(Title as in No. 1, supra.)

Take notice that the plaintiff [or defendant] in this suit requires the defendant [or plaintiff] to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [or plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H., *pleader* [or *agent*] for plaintiff [or defendant].

To E. F., *pleader* [or *agent*] for defendant [or plaintiff].

The facts, the admission of which is required, are—

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1896.
5. That O. was never married.

**No. 11. ADMISSION OF FACTS PURSUANT TO NOTICE.
(O. 12, r. 5.)**

(Title as in No. 1, supra.)

The defendant [or plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder speci-

fied, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion or by any one other than the plaintiff [or defendant, or party requiring the admission].

E. F., *pleader* [or *agent*] for *defendant* [or *plaintiff*

To G. H. *pleader* [or *agent*] for *plaintiff* [or *defendant*.]

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted,
1. That M. died on the 1st January, 1899 2. That he died intestate ... 3. That N. was his lawful son 4. That O. died 5. That O. was never married.	1. 2. 3. But not that he was his only lawful son. 4. But not that he died on the 1st April, 1896. 5.

No. 12.—NOTICE TO PRODUCE (GENERAL FORM).
(O. 12, r. 8)

(*Title as in No. 1, supra.*)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power, containing any entry memorandum or minute relating to the matters in question in this suit, and particularly.—

G. H., *pleader* [or *agent*] for *plaintiff* [or *defendant*].
To E. F., *pleader* [or *agent*] for *defendant* [or *plaintiff*].

APPENDIX D.

DECREES.

No. 1.—DECREE IN ORIGINAL SUIT. (O. 20, rr. 6,7.)

(Title.)

Claim for

This suit coming on this day for final disposal
before in the presence of

for the plaintiff and of
for the defendant it is ordered and decreed that

and that the sum of Rs. be paid by the
to the on account of
the costs of this suit, with interest thereon at the
rate of per cent. per annum from this
date to date of realization.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

Costs of Suit.

Plaintiff.

Defendant.

	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint.				Stamp for power ...			
2. Do. for power.				Do. for petition..			
3. Do. for exhibits.				Pleader's fee... ..			
4. Pleader's fee				Subsistence for wit-			
on Rs. ...				nesses.			
5. Subsistence for				Service of process.			
witnesses. ...				Commissioner's fee.			
6. Commissioner's							
fee.							
7. Service of pro-							
cess.							
Total ...				Total ...			

No. 2.—SIMPLE MONEY DECREE. (Section 34.)

(Title.)

Claim for

This suit coming on this day for final disposal
before _____ in the presence of _____

for the plaintiff and of _____
for the defendant, it is ordered that the
do pay to the _____ the sum of Rs.
with interest thereon at the rate of _____ per cent.
per annum from _____ to the date of
realization of the said sum and do also pay Rs.

_____, the costs of this suit with interest thereon at
the rate of _____ per cent. per annum from this date
to the date of realization.

GIVEN under my hand and the seal of the Court,
this _____ day of _____ 19 ____.

*Judge.**Costs of Suit.*

Plaintiff.

Defendant.

	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint.				Stamp for power .			
2. Do. for power.				Do. for petition.			
3. Do. for exhibits.				Pleader's fee ..			
4. Pleader's fee				Subsistence for wit-			
on Rs. . . .				nesses. . . .			
5. Subsistence for				Service of process ..			
witnesses ...				Commissioner's fee.			
6. Commissioner's							
fee							
7. Service of pro-							
cess							
Total ...				Total ...			

NO. 3.—PRELIMINARY DECREE FOR FORECLOSURE.
(O. 34, r. 2.)

(Title.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of 19 is Rs. ; and it is decreed as follows:—

(1) That if the defendant pays into Court the amount so declared due on or before the said day of 19. , the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him. [Where the plaintiff claims by derived title add or by those under whom he claims.] [Where the plaintiff is in possession add and shall put the defendant in possession of the property.]

(2) That if such payment is not made on or before the said day of 19 the defendant shall be debarred from all right to redeem the property.

Schedule.

Description of the mortgaged property.

NO. 4.—PRELIMINARY DECREE FOR SALE. (O. 34, r. 4.)

(Title.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of 19 is Rs. ; and that such amount shall carry

interest at the rate of per cent. per annum until realization; and it is decreed as follows:—

(1) That if the defendant pays into Court the amount so declared due on or before the said day of 19 , the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the defendant free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him. [*Where the plaintiff claims by derived title add or by those under whom he claims.*] [*Where the plaintiff is in possession add and shall put the defendant in possession of the property.*]

(2) That if such payment is not made on or before the said day of 19 the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court and applied in payment of what is declared due to the plaintiff as aforesaid together with subsequent interest and subsequent costs, and that the balance, if any, be paid to the defendant.

(3) That if the net proceeds of the sale are insufficient to pay such amount and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

Schedule.

Description of the mortgaged property.

No. 5.—PRELIMINARY DECREE FOR REDEMPTION.
(O. 34, r. 7.)

(Title.)

This suit coming on this day, etc. ; It is hereby declared that the amount due to the defendant on account of principal, interest and costs calculated up to the day of 19 is Rs. ;

and it is decreed as follows :—

(1) That if the plaintiff pays into Court the amount so declared due on or before the said day of 19 , the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, retransfer the property to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him. [Where the defendant claims by derived title add *or by those under whom he claims.*] [Where the defendant is in possession add *and shall put the plaintiff in possession of the property.*]

(2) That if such payment is not made on or before the said day of 19 , the plaintiff shall be debarred from all right to redeem the property. [If the mortgage is simple or usufructuary substitute *the property shall be sold.*]

Schedule.

Description of the mortgaged property.

**NO. 6.—DECREE FOR FORECLOSURE.—FIRST
MORTGAGEE v. SECOND MORTGAGEE AND MORTGAGOR.—
SUCCESSIVE PERIODS FOR REDEMPTION.**

(Title.)

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of

19 (a) is Rs. *x*, and that on the day of 19 (b) there will be due to the plaintiff for interest the further sum of Rs.

, making in all Rs. *y*; and it is further declared that on the day of 19

(b) there will be due to the first defendant on account of principal, interest and costs Rs. *z*;

and it is decreed as follows:—

(1) That if the first defendant pays into Court the said sum of Rs. *x* on or before the said day of 19 (a) the plaintiff shall deliver up, etc. (as in Form No. 3).

(2) That in default of the first defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(3) That in case of such foreclosure and if the second defendant pays into Court the said sum of Rs. *y*, on or before the day of 19, (b) the plaintiff shall deliver up, etc. (as in Form No. 3).

(4) That in default of the second defendant paying the said sum on or before the said day he shall be debarred from all right to redeem the property.

(5) That in case the first defendant shall redeem the mortgaged property, if the second defendant pays into Court the said sums of Rs. *y* and Rs. *z* on or before the day of 19, (b) the first defendant shall deliver up, etc. (as in Form No. 3).

{a) Insert a day within six months from the date of decree.

{b) Insert a day with in three months from the date mentioned in [a]

(6) That in default of the second defendant paying the said sums on or before the said day he shall be debarred from all right to redeem the property. [Where the second defendant is in possession add *and shall put the first defendant in possession of the property.*]

NO. 7.—DECREE FOR SALE.—FIRST MORTGAGEE v.
SECOND MORTGAGEE AND MORTGAGOR.—ONE PERIOD
FOR REDEMPTION.

(Title.)

It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the day of .

19 is Rs. *x*, and that on the said day there will be due to the first defendant on account of principal, interest and costs Rs. *y* ;
and it is decreed as follows :—

(1) That if the defendants or either of them pay into Court the said sum of Rs. *x* on or before the said day of 19 the plaintiff shall deliver up, etc. (as in Form No. 4).

(2) That if payment of the said sum is not made on or before the day of 19 the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into Court to the credit of this suit, and applied, first, in payment to the plaintiff of the said sum of Rs. *x* and such subsequent interest and costs as may be allowed by the Court ; secondly, in payment to the first defendant of the said sum of Rs. *y* and such subsequent interest and costs as aforesaid ; and that the balance, if any, be paid to the second defendant.

(4) That if the net proceeds of the sale are in sufficient to pay the said sum of Rs. x and such subsequent interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

(Title.)

And it is decreed as follows:—

19 , the first defendant shall deliver up, etc.
(as in Form No. 4).

(2) That if payment of the said sum is not made on or before the _____ day of _____ 19____, the first defendant shall be at liberty to apply that the suit be dismissed or for the mortgaged property; and in case he shall apply for a sale the mortgaged property or a sufficient part thereof shall be sold free from the incumbrances of the plaintiff and first defendant, and the proceeds of the sale (after defraying thereout the expenses of the sale) shall be paid into Court and applied, first, in payment to the first defendant of the said

sum of Rs. x and such subsequent interest and costs as may be allowed by the Court ; secondly, in payment to the plaintiff of the said sum of Rs. y and such subsequent interest and costs as aforesaid : and that the balance, if any, be paid to the second defendant.

(3) That if the plaintiff shall pay the said sum of Rs. x into Court on or before the day of 19 , the second defendant shall be at liberty to pay into Court the said sum and the sum of Rs. y on or before the day of 19 , and thereupon the plaintiff shall deliver up, etc. (as in Form No. 4.)

(4) That if the plaintiff shall pay the said sum as aforesaid but the second defendant shall fail to pay the said sums as aforesaid the mortgaged property or a sufficient part thereof shall be sold and the proceeds of the sale (after defraying thereout the expenses of the sale) shall be applied in payment to the plaintiff of the said sums of Rs. x and Rs. y and such subsequent interest and costs as may be allowed by the Court, and that the balance, if any, be paid to the second defendant.

(5) That if the net proceeds of the sale are insufficient to pay the said sums, interest and costs in full, the plaintiff shall be at liberty to apply for a personal decree for the amount of the balance.

No. 9.—DECREE FOR SALE.—SUB-MORTGAGEE v. MORTGAGEE AND MORTGAGOR, THE AMOUNT OF THE ORIGINAL MORTGAGE EXCEEDING THAT OF THE SUB-MORTGAGE.

(Title.)

[Insert declarations of the amounts due to the plaintiff Rs. x and to the first defendant Rs. y as in Form No. 7.]

And it is decreed as follows :—

1. The first defendant and the second defendant shall be at liberty to pay into Court the said sums of Rs. x and Rs. y respectively on or before the day of 19 , and upon either of the said payments being made the plaintiff shall deliver up, etc., (as in Form No. 4), and thereupon the sum of Rs. x shall be paid to the plaintiff.

2. In the event of payment by the second defendant as aforesaid the first defendant shall also deliver up, etc. (as in Form No. 4), and thereupon the residue (after payment to the plaintiff as aforesaid) shall be paid to the first defendant.

(3) In default of payment by the first and second defendants as aforesaid the mortgaged property or a sufficient part thereof shall be sold, and the proceeds of the sale (after deducting thereout the expenses of the sale) shall be paid into Court and applied first in payment to the plaintiff of the said sum of Rs. x and such subsequent interest and costs as may be allowed by the Court (but so that the aggregate amount of principal and interest shall not exceed the amount of principal and interest due to the first defendant) ; secondly, in payment to the first defendant of the excess of Rs. y over Rs. x and such subsequent interest and costs as aforesaid ; and that the balance, if any, be paid to the second defendant.

(4) In the event of payment by the first defendant and in default of payment by the second defendant as aforesaid, the first defendant shall be at liberty to apply for the sale of the mortgaged property and thereupon the same or a sufficient part thereof shall be sold, and the net sale-proceeds shall be applied in payment to the first defendant of the said sum of Rs. y and such further interest and

costs as may be allowed by the Court, and the balance if any shall be paid to the second defendant.

(5) That if the net proceeds of the sale are insufficient to pay the aforesaid sums with further interest and cost the plaintiff or the first defendant as the case may be, shall be at liberty to apply for a personal decree for the amount of the balance.

No. 10.—FINAL DECREE FOR FORECLOSURE. (O. 34, r. 3.)

(*Title.*)

Upon reading the decree passed in the above suit on the day of
19 , and the application of the plaintiff dated the
 day of 19 and after
hearing pleader for the plaintiff and
 pleader for the defendant, and it
appearing that the payment directed by the said
decree has not been made :

It is heredy decreed as follows :—

That the defendant and all persons claiming through or under him be debarred from all right to redeem the mortgaged property set out and described in the schedule hereunto annexed. [Where the defendant is in possession add *and shall put the plaintiff in possession of the said property*]

Schedule.

Description of the mortgaged property.

No. 11.—DECREE AGAINST MORTGAGOR PERSONALLY. (O. 34, r. 6.)

(*Title*)

WHEREAS the net proceeds of the sale held under the final decree for sale passed in this suit on the
 day of 19 , and now in Court
to the credit of this suit, amount to Rs. *y* and there

is now due to the plaintiff the sum of Rs. x mentioned in the said decree together with the further sum of Rs. interest thereon at the rate of 6 per cent. per annum from the day of

19 to this day, and also the sum of Rs. for his costs of this suit subsequent to the decree, making a balance due to the plaintiff of Rs. z ; And whereas it appears to this Court that the defendant is personally liable for the said balance

It is hereby decreed as follows:—

(1) That the said sum of Rs. y be paid out of Court to the plaintiff.

(2) That the defendant do pay to the plaintiff the said sum of Rs. z with interest thereon at the rate of 6 per cent. per annum from this day to the date of realization of the said sum.

NO. 12.—DECREE FOR RECTIFICATION OF INSTRUMENT.

(Title.)

It is hereby declared that the , dated the day of 19 , does not truly express the intention of the parties to such .

And it is decreed that the said be rectified by .

NO. 13.—DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS.

(Title.)

It is hereby declared that the , dated the day of 19 , and made between and , is void as against the plaintiff and all other the creditors, if any, of the defendant .

No. 14.—INJUNCTION AGAINST PRIVATE NUISANCE.

(Title.)

Let the defendant _____, his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 15.—INJUNCTION AGAINST BUILDING HIGHER
THAN OLD LEVEL.*(Title.)*

Let the defendant _____, his contractors agents and workmen, be perpetually restrained from continuing to erect upon his premises in _____ any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No. 16.—INJUNCTION RESTRAINING USE OF
PRIVATE ROAD.*(Title.)*

Let the defendant _____, his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at _____, the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

NO. 17.—PRELIMINARY DECREE IN AN
ADMINISTRATION-SUIT.

(Title.)

It is ordered that the following accounts and inquiries be taken and made; that is to say:—

In creditor's suit :—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. That an account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

3. That an inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin [*or one of the next-of-kin*] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

4. An account of the funeral and testamentary expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the _____ day of _____ next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the _____ *shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (or proceeding), and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the _____ *(and shall give security by bond for the due performance of his duties to the amount of _____ rupees).

10. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—

- (a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;
- (b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof;
- (c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers, as shall consent to the sale hereinafter directed.

Here insert name of proper officer.

12. And it is ordered that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the *and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the

15. And, lastly, it is ordered that this suit [or proceeding] stand adjourned for making final decree to the _____ day of _____

* Here insert name of proper officer.

NO. 18.—FINAL DECREE IN AN ADMINISTRATION-SUIT
BY A LEGATEE.

(Title.)

1. It is ordered that the defendant do, on or before the day of . pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest, at the rate of Rs. per cent. per annum, from the day of to the day of , amounting together to the sum of Rs. .

2. Let the *of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a) The costs of the plaintiff to Mr. , his attorney [*or pleader*] or, and the costs of the defendant to Mr. , his attorney [*or pleader*].

(b) And (*if any debts are due*) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the

*together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legates mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

* Here insert name of proper officer.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

NO. 19.—PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

(Title.)

1. It is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff ;

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy ;

3. And it is also ordered that the defendant do, within _____ weeks after the date of the certificate of the _____ *pay to the plaintiff the amount of what the _____ *shall certify to be due for principal and interest ;

4. And it is ordered that the defendant to pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

NO. 20.—FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

(Title.)

1. Let the _____ *of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed be paid by the defendant to the plaintiff out of the sum of Rs. _____ the balance by the said certificate found to be due from the said defendant on account of the personal estate of E. F., the intestate, within one week after the taxation of the said costs by the said _____ *and let the defendant

* Here insert name of proper officer.

retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs. _____, after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—

- (a) Let the defendant, within one week after the taxation of the said costs by the _____ *as aforesaid, pay one-third share of the said residue to the plaintiffs A. B., and C. D., his wife, in her right as the sister and one of the next-of-kin of the said E. F., the intestate.
- (b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said E. F., the intestate.
- (c) And let the defendant, within one week after the taxation of the said costs by the _____ *as aforesaid, pay the remaining one-third share of the said residue to G. H., as the brother and the other next-of-kin of the said E. F., the intestate.

No. 21.—PRELIMINARY DECREE IN A SUIT FOR
DISSOLUTION OF PARTNERSHIP AND THE TAKING OF
PARTNERSHIP ACCOUNTS.

(Title.)

It is declared that the proportionate shares of parties in the partnership are as follows:—

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the _____ day of _____, and it is ordered

* Here insert name of proper officer.

that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property and effects now belonging to the said partnership ;

2. An account of the debts and liabilities of the said partnership ;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the permises, and that the

*may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of

, and that the do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of .

* Here insert name of proper officer.

No. 22.—FINAL DECREE IN A SUIT FOR DISSOLUTION
OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP
ACCOUNTS.

(Title.)

It is ordered that the fund now in Court, amounting to the sum of Rs. _____, be applied as follows;—

1. In payment of the debts due by the partnership set forth in the certificate of the *amounting in the whole to Rs. _____.

2. In payment of the costs of all parties in this suit, amounting to Rs. _____.

[*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of Rs. _____ to the plaintiff as his share of the partnership-assets, of the sum of Rs. _____, being the residue of the said sum of Rs. _____ now in Court, to the defendant as his share of the partnership-assets.

[*Or, And that the remainder of the said sum of Rs. _____ be paid to the said plaintiff [or defendant] in part payment of the sum of Rs. _____*

certified to be due to him in respect of the partnership-accounts.]

4. And that the defendant [or plaintiff] do on or before the _____ day of _____ pay to the plaintiff [or defendant] the sum of Rs. _____

being the balance of the sum of Rs. _____

due to him, which will then remain due.

* Here insert name of proper officer.

No. 23.—DECREE FOR RECOVERY OF LAND AND
MESNE PROFITS.

(Title.)

It is hereby decreed as follows:—

(1) That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

(2) That the defendant do pay to the plaintiff the sum of Rs. with interest thereon at the rate of per cent. per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.

Or

(2) That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

(3) That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

Schedule.

APPENDIX E.

EXECUTION.

No. 1.—NOTICE TO SHOW CAUSE WHY A PAYMENT
OF ADJUSTMENT SHOULD NOT BE RECORDED AS
CERTIFIED. (O. 21, r. 2.)

(Title.)

To

WHEREAS in execution of the decree in the above-named suit has applied to this Court that the sum of Rs. recoverable under the decree has been $\frac{\text{paid}}{\text{adjusted}}$ and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of

19 , to show cause why the $\frac{\text{payment}}{\text{adjustment}}$ aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

No. 2.—PRECEPT. (Section 46.)

(Title.)

UPON hearing the decree-holder it is ordered that this precept be sent to the Court of
at under section 46 of the Code of Civil Procedure, 1908, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

Schedule.

Dated the day of 19 .

**No. 3.—ORDER SENDING DECREE FOR EXECUTION
TO ANOTHER COURT. (O. 21, r. 6.)**

(Title.)

WHEREAS the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of at for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1908, it is

Ordered :

That a copy of this order be sent to with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the day of 19 .

Judge.

**No. 4.—CERTIFICATE OF NON-SATISFACTION
OF DECREE. (O. 21, r. 6.)**

(Title.)

Certified that no (1) satisfaction of the decree of this Court in Suit No. of 19 , a copy of which

is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the day of 19 .

Judge.

(1) If partial, strike out "no" and state to what extent.

**NO. 5.—CERTIFICATE OF EXECUTION OF DECREE
TRANSFERRED TO ANOTHER COURT. (O. 21, r. 6.)**

(Title.)

Number of suit and the Court by which the decree was passed.	Names of parties.	Date of application for execution.	Number of the execution case.	Processes issued and dates of service thereof.	Costs of execution.	Amount realized.	How the case is disposed of.	Remarks.
1	2	3	4	5	6	7	8	9
					Rs. A.P.	Rs. A.P.		

Signature of Muharrir in charge.

Signature of Judge.

No. 6.—APPLICATION FOR EXECU-

In the Court of

I

, decree-holder, hereby apply for

Number of suit.	Names of parties.	Date of decree.	Whether any appeal preferred from decree.	Payment of adjustment made, if any.	Previous application, if any, with date and result.	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree.
1	2	3	4	5	6	7
789 of 1897.	A. B.—Plaintiff. C. D.—Defendant.	October 11th, 1897.	No.	None.	Rs. 72—4—0 recorded on application, dated the 4th March 1899.	Rs. 314—8—2 principal [interest at 6 per cent. per annum, from date of decree till payment].

I

Dated the

declare that what is stated herein
day of 19 .

TION OF DECREE. (O. 21, r. 11.)

execution of the decree herein below set forth :—

Amount of costs, if any, awarded.	Against whom to be executed.	Mode in which the assistance of the Court is required.
8	9	10

As awarded in the decree	Rs. A. P.
Subsequently incurred	47 10 4
	8 2 0
Total	55 12 4

Against the defendant C. D.

[When attachment and sale of moveable property is sought.]

I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution, be realized by attachment and sale of defendant's moveable property as per annexed list and paid to me.

[When attachment and sale of immoveable property is sought.]

I pray that the total amount of Rs. [together with interest on the principal sum up to date of payment] and the costs of taking out this execution be realized by the attachment and sale of defendant's immoveable property specified at the foot of this application and paid to me.

is true to the best of my knowledge and belief.

Signed

, Decree-holder.

[When attachment and sale of immoveable
property is sought.]

Description and Specification of Property.

The undivided one-third share of the judgment-debtor in a house situated in the village of value Rs. 40 and bounded as follows: —

East by G's house; west by H's house; south by public road; north by private lane and J's house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified.

Signed , *Decree-holder.*

No. 7.—NOTICE TO SHOW CAUSE WHY EXECUTION
SHOULD NOT ISSUE. (O. 21, r. 22.)

(Title.)

To

WHEREAS

has made application to this Court for execution of decree in Suit No. of 19

on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court

on the day of 19 , to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

No. 8.—WARRANT OF ATTACHMENT OF
MOVEABLE PROPERTY IN EXECUTION OF A DECREE
FOR MONEY. (O. 21, r. 30.)

(*Title.*)

To

The Bailiff of the Court.

<p>WHEREAS</p> <p>Court passed on the</p> <p>DEGREE.</p> <p>Principal ...</p> <p>Interest ...</p> <p>Costs ...</p> <p>Costs of exe- cution ...</p> <p>Further inte- rest ...</p> <p>Total ...</p>	<p>was ordered by decree of this</p> <p>day of 19 , in Suit</p> <p>No. of 19 , to pay</p> <p>to the plaintiff the sum of Rs.</p> <p>as noted in the margin; and</p> <p>whereas the said sum of Rs.</p> <p>has not been paid; These are to</p> <p>command you to attach the</p> <p>moveable property of the said</p> <p>as set forth in the schedule</p> <p>hereunto annexed, or which shall</p> <p>be pointed out to you by the</p> <p>said , and unless the</p> <p>said shall pay to you the</p> <p>said sum of Rs. together with Rs.</p> <p>the costs of this attachment, to hold the same until</p> <p>further orders from this Court.</p>
---	---

You are further commanded to return this war-
rant on or before the day of 19 , with
an endorsement certifying the day on which and
manner in which it has been executed, or why it
has not been executed.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Schedule.

Judge.

NO. 9.—WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE
PROPERTY ADJUDGED BY DECREE. (O. 21, r. 31.)

(Title.)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of
this Court passed on the day
of 19 , in Suit No. of 19 , to
deliver to the plaintiff the moveable property (or a
 share in the moveable property)
specified in the schedule hereunto annexed, and
whereas the said property (or share) has not been
delivered ;

These are to command you to seize the said move-
able property (or a share of the
said moveable property) and to deliver it to the
plaintiff or to such person as he may appoint in his
behalf.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Schedule.

NO. 10.—NOTICE TO STATE OBJECTIONS TO DRAFT OF
DOCUMENT. (O. 21, r. 34.)

(Title.)

To

TAKE notice that on the day of
19 , the decree-holder in the above suit
presented an application to this Court that the Court
may execute on your behalf a deed of , where-
of a draft is hereunto annexed, of the immoveable
property specified hereunder, and that the
day of 19 is appointed for the hearing of

the said application ; and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

Description of property.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

NO. 11.—WARRANT TO THE BAILIFF TO GIVE
POSSESSION OF LAND, ETC. (O. 21, r. 35.)

(Title.)

To

The Bailiff of the Court.

WHEREAS the undermentioned property in the
occupancy of has been decreed
to , the plaintiff in this suit ;
You are hereby directed to put the said
in possession of the same, and you are hereby
authorized to remove any person bound by the
decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Schedule.

Judge.

NO. 12.—NOTICE TO SHOW CAUSE WHY WARRANT OF
ARREST SHOULD NOT ISSUE. (O. 21, r. 37.)

(Title.)

To

WHEREAS has made
application to this Court for execution of decree in
Suit No. of 19 by arrest and imprisonment of
your person, you are hereby required to appear be-
fore this Court on the day of 19 ,

to show cause why you should not be committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

No. 13.—WARRANT OF ARREST IN EXECUTION.
(O. 21, r. 38.)

(Title.)

To

The Bailiff of the Court.

<p>WHEREAS</p> <p>Principal .</p> <p>Interest .</p> <p>Costs .</p> <p>Execution .</p> <p>Total.</p>	<p>was adjudged by a decree of the Court in Suit No. of 19 , dated the day of 19 , to pay to the decree- holder the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said decree-holder in satis- faction of the said decree, these are to command you to arrest the said judgment-debtor and unless the said judgment-debtor shall pay to you the said sum of Rs. , together with Rs. for the costs of executing this process, to bring the said defend- ant before the Court with all convenient speed. You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.</p>
---	--

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

No. 15.—ORDER FOR THE RELEASE OF A PERSON
IMPRISONED IN EXECUTION OF A DECREE.

(Sections 58, 59.)

(Title.)

To

The Officer in charge of the jail at
UNDER orders passed this day, you are hereby
directed to set free judgment-
debtor now in your custody.

Dated

Judge.

No. 16.—ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE
ATTACHED CONSISTS OF MOVEABLE PROPERTY TO
WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A
LIEN OR RIGHT OF SOME OTHER PERSON TO THE
IMMEDIATE POSSESSION THEREOF. (O. 21, r. 46.)

(Title.)

To

WHEREAS has
failed to satisfy a decree passed against
on the day of 19 in Suit
No. of 19, in favour of for
Rs. ; It is ordered that the defendant
be, and is hereby, prohibited and restrained, until
the further order of this Court, from receiving from
the following property in the possession
of the said, that is to say,
, to which the defendant is en-
titled, subject to any claim of the said,
and the said is hereby prohibited and
restrained, until the further order of this Court,
from delivering the said property to any person or
persons whomsoever.

GIVEN under my hand and the seal of the Court,
this day of 19.

Judge.

No. 17.—ATTACHMENT IN EXECUTION.
PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS
OF DEBTS NOT SECURED BY NEGOTIABLE
INSTRUMENTS. (O. 21, r. 46.)

(*Title.*)

To

WHEREAS _____ has failed to satisfy a decree passed against _____ on the _____ day of _____ 19 _____ in Suit No. _____ of 19 _____, in favour of _____, for Rs. _____; It is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, _____ and that you, the said _____, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court:

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19 _____.

Judge.

No. 18.—ATTACHMENT IN EXECUTION.
PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS
OF SHARES IN THE CAPITAL OF A CORPORATION.

(O. 21, r. 46.)

(*Title.*)

To

Defendant, and to

_____, Secretary of

Corporation.

WHEREAS _____ has failed to satisfy a decree passed against _____ on the _____ day of _____ 19 _____, in Suit

No. of 19 , in favour of , for
 Rs. ; It is ordered that you, the defend-
 ant, be, and you are hereby, prohibited and res-
 trained, until the further order of this Court, from
 making any transfer of shares in the
 aforesaid Corporation, namely, , or from
 receiving payment of any dividends thereon; and
 you, , the Secretary of the said Cor-
 poration, are hereby prohibited and restrained from
 permitting any such transfer or making any such
 payment.

GIVEN under my hand and the seal of the Court,
 this day of 19 .

Judge.

No. 19.—ORDER TO ATTACH SALARY OF PUBLIC OFFICER
 OR SERVANT OF RAILWAY COMPANY OR
 LOCAL AUTHORITY. (O. 21, r. 48.)

(Title.)

To

WHEREAS , judgment-
 debtor in the above-named case, is a (*describe office*
of judgment-debtor) receiving his salary (*or allow-*
ances) at your hands; and whereas ,
 decree-holder in the said case, has applied in this
 Court for the attachment of the salary (*or allow-*
ances) of the said to the extent of
 due to him under the decree; You are hereby
 required to withhold the said sum of
 from the salary of the said in monthly
 instalments of and to remit the said
 sum (*or monthly instalments*) to this Court.

GIVEN under my hand and the seal of the Court,
 this day of 19 .

Judge.

No. 20.—ORDER OF ATTACHMENT OF NEGOTIABLE
INSTRUMENT. (O. 21, r. 51.)

(Title.)

To

The Bailiff of the Court.

WHEREAS an order has been passed by this Court
on the day of 19 ,
for the attachment of ;
You are hereby directed to seize the said
and bring the same into Court.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

—————
No. 21.—ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF
MONEY OR OF ANY SECURITY IN THE CUSTODY OF A
COURT OF JUSTICE OR OFFICER OF GOVERNMENT.
(O. 21, r. 52.)

(Title.)

To

SIR,

The plaintiff having applied, under rule 22 of
Order XXI of the Code of Civil Procedure, 1908,
for an attachment of certain money now in your
hands (*here state how the money is supposed to be in
the hands of the person addressed, on what account,
etc.*), I request that you will hold the said money
subject to the further order of this Court.

I have the honour to be,

Sir,

Your most obedient

Dated the

day of

19 .

No. 22.—NOTICE OF ATTACHMENT OF A DECREE TO THE COURT WHICH PASSED IT. (O. 21, r. 53.)

(Title.)

To

The Judge of the Court of

SIR,

I have the honour to inform you that the decree obtained in your Court on the . . . day of 19 , by in Suit No. . . of 19 , in which he was and

was has been attached by this Court on the application of the in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.

Judge.

Dated the . . . day of 19 .

No. 23.—NOTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE: (O. 21, r. 53.)

(Title.)

To

WHEREAS an application has been made in this Court by the decree-holder in the above suit for the attachment of a decree obtained by you on the day of 19 , in the Court of

in Suit No. of 19 , in
 which was and was
 ; It is ordered that you, the said
 , be, and you are hereby, prohibited and
 restrained, until the further order of this Court,
 from transferring or charging the same in any way.

GIVEN under my hand and the seal of the Court,
 this day of 19 .

Judge.

NO. 24.—ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY
 CONSISTS OF IMMOVEABLE PROPERTY. (O. 21, r. 54.)

(*Title.*)

To

Defendant.

WHEREAS you have failed to satisfy a decree
 passed against you on the day of
 19 , in Suit No. of 19 ,
 in favour of , for
 Rs. ; it is ordered that you, the said
 , be, and you are hereby, prohibited
 and restrained, until the further order of this
 Court, from transferring or charging the property
 specified in the schedule hereunto annexed, by
 sale, gift or otherwise and that all persons be, and
 that they are hereby, prohibited from receiving
 the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court,
 this day of 19 .

Schedule.

• *Judge.*

**NO. 25.—ORDER FOR PAYMENT TO THE PLAINTIFF,
ETC., OF MONEY, ETC., IN THE HANDS OF A THIRD
PARTY. (O. 21, r. 56.)**

(Title.)

WHEREAS the following property
has been attached in execution of a decree in Suit
No. of 19 , passed on the day
of 19 , in favour of
 , for Rs. ; It is ordered that the
property so attached, consisting of Rs.
in money and Rs. in currency-notes, or a
sufficient part thereof to satisfy the said decree,
shall be paid over by you, the said to

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

NO. 26.—NOTICE TO ATTACHING CREDITOR.
(O. 21, r. 58.)

(Title.)

To

WHEREAS has made application
to this Court for the removal of attachment on
placed at your instance in
execution of the decree in Suit No.
of 19 , this is to give you notice to appear before
this Court on , the
day of 19 , either in person or by a
pleader of the Court duly instructed to support
your claim, as attaching creditor.

GIVEN under my hand and the seal of Court,
this day of 19 .

Judge.

NO. 27.—WARRANT OF SALE OF PROPERTY IN
EXECUTION OF A DECREE FOR MONEY. (O. 21, r. 66.)

(*Title.*)

To

The Bailiff of the Court.

THESE are to command you to sell by auction,
after giving days
previous notice, by affixing the same in this Court-
house, and after making due proclamation, the
property
attached under a warrant from this court, dated the
day of 19 , in
execution of a decree in favour of in Suit
No. of 19 , or so
much of the said property as shall realize the
sum of Rs. .. being the
of the said decree and costs still remaining
unsatisfied.

You are further commanded to return this warrant
on or before the day of 19 ,
with an endorsement certifying the manner in
which it has been executed, or the reason why
it has not been executed.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

NO. 28.—NOTICE OF THE DAY FIXED FOR SETTling
A SALE PROCLAMATION. (O. 21, r. 66.)

(Title.)

To Judgment-debtor.

WHEREAS in the above-named suit the
decree-holder has applied for the sale of ;
You are hereby informed that the day of
19 has been fixed for
settling the terms of the proclamation of sale.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

NO. 29.—PROCLAMATION OF SALE. (O. 21, r. 66)

(Title.)

<p>Suit No. of 19 , decided by the of in which was plaintiff and was defendant.</p>	<p>Notice is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1908, an order has been passed by this Court for the sale of the attached property men- tioned in the annexed sche- dule, in satisfaction of the claim of the decree-holder in the suit (1) mentioned in the margin, amounting with costs and interest up to date of sale to the sum of</p>
---	--

The sale will be by public auction, and the pro-
perty will be put up for sale in the lots specified in
the schedule. The sale will be of the property of
the judgment-debtors above-named as mentioned in
the schedule below ; and the liabilities and claims

attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by _____ at the monthly sale commencing at _____ o'clock on the _____ at

_____ . In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot, the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorized agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further.

Conditions of Sale.

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid

Schedule of Property.

Number of lot.	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Detail of any incumbrances to which the property is liable.	Claims, if any, which have been put forward to the property, and any other known particulars bearing on its nature and value.

No. 30.—ORDER ON THE NAZIR FOR CAUSING SERVICE
OF PROCLAMATION OF SALE. (O. 21, r. 66.)

(Title.)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of the property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the

19 day of has been fixed for the sale of the said property, copies

of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of said proclamation on a conspicuous part of each of the said properties and afterwards on the court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the day of 19 .

Schedule.

Judge.

NO. 31.—CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT. (O. 21, r. 71.)

(Title.)

Certified that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of default on the part of purchaser, there was a deficiency in the price of the said property amounting to Rs. and that the expenses attending such re-sale amounted to Rs. making a total of Rs. , which sum is recoverable from the defaulter.

Dated the day of 19 .

Officer holding the sale.

**No. 32.—NOTICE TO PERSON IN POSSESSION OF
MOVEABLE PROPERTY SOLD IN EXECUTION. (O. 21,r. 79.)**

(Title.)

To

WHEREAS

has become the purchaser at a public sale in execution of the decree in the above suit of

now in your possession you
are hereby prohibited from delivering possession of
the said

to any person except the said

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

NO. 33.—PROHIBITORY ORDER AGAINST PAYMENT
OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE
PURCHASER. (O. 21, r. 79.)

(Title.)

To

and to

WHEREAS

has

become the purchaser at a public sale in execution of the decree in the above suit of

being debts due from you
to you

It is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said

GIVEN under my hand and the seal of the Court,
this day of 19

Judge.

**No. 34.—PROHIBITORY ORDER AGAINST THE
TRANSFER OF SHARES SOLD IN EXECUTION. (O. 21, r. 79.)**

(Title.)

To

and , Secretary of Corporation.

WHEREAS has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of

standing in the name of you

; It is ordered that you

be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon; and you

Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

**No. 35.—CERTIFICATE TO JUDGMENT-DEBTOR
AUTHORIZING HIM TO MORTGAGE, LEASE OR SELL
PROPERTY. (O. 21, r. 83.)**

(Title.)

WHEREAS in execution of the decree passed in the above suit an order was made on the day of 19 for the sale of the under-mentioned property of the judgment-debtor , and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him, to raise the

amount of the decree by mortgage, lease or private sale of the said property or of some part thereof;

This is to certify that the Court doth hereby authorize the said judgment-debtor to make the proposed mortgage, lease or sale within a period of from the date of this certificate; provided that all monies payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

Description of property.

GIVEN under my hand and the seal of the Court,
this day of 19 .
Judge.

No. 36.—NOTICE TO SHOW CAUSE WHY SALE
SHOULD NOT BE SET ASIDE. (O. 21, rr. 90, 92.)

(Title.)

To

WHEREAS the under-mentioned property was sold on the day of 19 in execution of the decree passed in the above-named suit, and whereas the decree-holder [or judgment-debtor] has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [or fraud] in publishing [or conducting] the sale, namely, that

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Description of property.

Judge.

No 37.—NOTICE TO SHOW CAUSE WHY SALE SHOULD
NOT BE SET ASIDE. (O. 21, rr. 91, 92).

(Title.)

To

WHEREAS _____, the
purchaser of the under-mentioned property sold on
the _____ day of _____

19 _____, in execution of the decree passed in the
above-named suit, has applied to this Court to set
aside the sale of the said property on the ground
that _____, the
judgment-debtor, had no saleable interest therein.

Take notice that if you have any cause to show
why the said application should not be granted,
you should appear with your proofs in this Court
on the _____ day of _____ 19 _____
when the said application will be heard and deter-
mined.

GIVEN under my hand and the seal of the Court,
this _____ day of _____ 19 _____.

Description of property.

Judge.

No. 38.—CERTIFICATE OF SALE OF LAND. (O. 21, r. 94.)

(Title.)

THIS is to certify that
_____ has been declared the purchaser at a
sale by public auction on the _____ day of _____
19 _____ of _____
in execution of decree in this suit, and
that the said sale has been duly confirmed by this
Court.

GIVEN under my hand and the seal of the Court,
this _____ day of _____ 19 _____.

Judge.

No. 39.—ORDER FOR DELIVERY TO CERTIFIED
PURCHASER OF LAND AT A SALE IN EXECUTION.
(O. 21, r. 95.)

(*Title.*)

To

The Bailiff of the Court.

WHEREAS _____ has
become the certified purchaser of _____
at a sale in execution of decree
in Suit No. _____ of 19 _____; You are
hereby ordered to put the said
_____, the certified purchaser, as aforesaid,
in possession of the same.

GIVEN under my hand and the seal of the Court,
this _____ day of _____ 19 _____.

Judge.

No. 40.—SUMMONS TO APPEAR AND ANSWER CHARGE OF
OBSTRUCTING EXECUTION OF DECREE. (O. 21, r. 97.)

(*Title.*)

To

WHEREAS _____ the decree-holder in the
above suit, has complained to this Court that you
have resisted (*or* obstructed) the officer charged
with the execution of the warrant for possession:

You are hereby summoned to appear in this
Court on the _____ day of
_____ 19 _____ at _____ A. M., to answer the
said complaint.

GIVEN under my hand and the seal of the Court,
this _____ day of _____ 19 _____.

Judge.

No. 41.—WARRANT OF COMMITTAL. (O. 21, r. 98.)

(Title.)

To

The Officer in charge of the Jail at

WHEREAS the undermentioned property has been decreed to

, the plaintiff in this suit, and whereas the Court is satisfied that without any just cause resisted [*or obstructed*] and is still resisting [*or obstructing*] the said

in obtaining possession of the property, and whereas the said

has made application to this Court that the said be committed to the civil prison ;

You are hereby commanded and required to take and receive the said into the civil prison and to keep him imprisoned therein for the period of days.

GIVEN under my hand and the seal of the Court, this day of 19 .

Judge.

No. 42.—AUTHORITY OF THE COLLECTOR TO STAY
PUBLIC SALE OF LAND. (Section 72.)

(Title.)

To

Collector of

SIR,

In answer to your communication No. , dated , representing that the in execution of the decree in this suit of land situate within your district

is objectionable, I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,

Sir,

Your obedient Servant,

Judge.

APPENDIX F.

SUPPLEMENTAL PROCEEDINGS.

No. 1.—WARRANT OF ARREST BEFORE JUDGMENT.
(O. 38, r. 1.)

(Title.)

To

The Bailiff of the Court.

WHEREAS claims the sum of Rs. has proved to the satisfaction of the Court that there <u>is probable cause for believing that the defendant</u> <hr style="width: 20%; margin-left: 0;"/> Principal Interest Costs Total	is about to — are to command you to demand and receive from the said the sum of Rs. — sufficient to satisfy the plaintiff's claim, and unless the said sum of Rs. — delivered to you by or on behalf of the said into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of Rs.	These . These . These as suffi- the plaintiff's is forthwith de- to take the said should not Rs.
--	---	--

for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

**No. 2.—SECURITY FOR APPEARANCE OF A DEFENDANT
ARRESTED BEFORE JUDGMENT. (O. 38, r. 2.)**

(Title.)

WHEREAS at the instance of , the plaintiff in the above suit, the defendant, has been arrested and brought before the Court ;

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security :

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit ; and in default of such appearance I bind myself, my heirs and executors, to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at this day of 19 .

(Signed)

Witnesses.

1. .
2. .

No. 3.—SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE. (O. 38, r. 3.)

(Title.)

To

WHEREAS who became surety on the
 day of 19 for your ap-
pearance in the above suit, has applied to this
Court to be discharged from his obligation :

You are hereby summoned to appear in this
Court in person on the day of
19 , at A.M., when the said application
will be heard and determined.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

No. 4.—ORDER FOR COMMITTAL. (O. 38, r. 4).

(Title.)

To

WHEREAS , plaintiff in this suit, has
made application to the Court that security be
taken for the appearance of , the
defendant, to answer any judgment that may be
passed against him in the suit; and whereas the
Court has called upon the defendant to furnish
such security, or to offer a sufficient deposit in lieu
of security, which he has failed to do; it is order-
ed that the said defendant be
committed to the civil prison until the decision of
the suit; or, if judgment be pronounced against
him, until satisfaction of the decree.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

NO. 5.—ATTACHMENT BEFORE JUDGMENT WITH ORDER
TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.
(O. 38, r. 5.)

(Title.)

To

The Bailiff of the Court.

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit These are to command you to call upon the said defendant on or before the day of 19 either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof of such portion of the value as may be sufficient to satisfy any decree that may be passed against him ; or to appear and show cause why he should not furnish security ; and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court ; and you are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it was not been executed.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

NO. 6.—SECURITY FOR THE PRODUCTION OF PROPERTY.
(O. 38, r. 5.)
(Title.)

WHEREAS at the instance of _____, the plaintiff in the above suit, _____ the defendant, has been directed by the Court to furnish security in the sum of Rs. _____ to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed ;

Therefore I _____ have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree ; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs. _____ or such sum not exceeding the said sum as the said Court may adjudge.

Schedule.

Witness my hand at _____ this _____ day of
19 .

(Signed)

Witnesses.

- 1.
- 2.

NO. 7.—ATTACHMENT BEFORE JUDGMENT, ON PROOF
OF FAILURE TO FURNISH SECURITY. (O. 38, r. 6.)

(Title.)

To

The Bailiff of the Court.

WHEREAS _____, the plaintiff in this suit, has applied to the Court to call upon _____, the defendant, to furnish

security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said _____ to furnish such security, which he has failed to do; These are to command you to attach

the property of the said _____ and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the _____ day of _____ 19____ with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

NO. 8.—TEMPORARY INJUNCTIONS. (O. 39, r. 1)

(Title.)

Upon motion made unto this Court by _____, Pleader of [*or* Counsel for] the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [*or* the plaint filed in this suit on the _____ day of _____, *or* the written statement of the said plaintiff filed on the _____ day of _____] and upon hearing the evidence of _____ and _____ in support thereof [*if after notice and defendant not appearing: add, and also the evidence of* _____ as to service of notice of this motion upon the defendant C.D.]. This Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and

workmen, from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or, in the written statement, or petition, of the plaintiff and evidence at the hearing of this motion mentioned*] being No. 9, Oilmongers Street, Hindupur, in the Taluk of _____, and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this _____ day of _____ 19 .

Judge.

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—*]

_____ to restrain the defendants _____ and _____ from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or bill of exchange*] in question, dated on or about the _____, etc., mentioned in the plaintiff's plaint [*or petition*] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[*In copyright cases*] _____ to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called _____, or any part thereof, until the, _____ etc.

[*Where part only of a book is to be restrained*] _____ to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [*or petition and evidence, etc.*] mentioned to have been published

To restrain a partner from in any way interfering in the business]

to restrain the defendant C.D., his servants and agents, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. and D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

No. 6.—APPOINTMENT OF A RECEIVER. (O. 40, r. 1.) ;
(Title.)

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 19 , in favour of

You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1908, with full powers under the provisions of that Order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on _____.

You will be entitled to remuneration at the rate of _____ per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

No. 7.—BOND TO BE GIVEN BY RECEIVER. (O. 40, r. 3.)

(Title.)

KNOW all men by these presents, that we
and , and are jointly and several-
ly bound to of the Court of
in Rs. to be paid to the said or his
successor in office for the time being. For which
payment to be made we bind ourselves, and each of
us, in the whole, our and each of our heirs, executors
and administrators, jointly and severally, by these
presents.

Date this day of 19 .

Whereas a plaint has been filed in this Court by
against for the purpose of
[here insert the object of suit].

And whereas the said has been ap-
pointed, by order of the above-mentioned Court, to
receive the rents and profits of the immoveable prop-
erty and to get in the outstanding moveable prop-
erty of in the said plaint named :

Now the condition of this obligation is such, that
if the above-bounden shall duly account
for all and every the sum and sums of money which
he shall so receive on account of the rents and profits
of the immoveable property, and in respect of the
moveable property, of the said at such
periods as the said Court shall appoint, and shall
duly pay the balances which shall from time to time
be certified to be due from him as the said Court
hath directed or shall hereafter direct, then this
obligation shall be void, otherwise it shall remain
in full force.

Signed and delivered by the above-bounden in the
presence of

Note.—If deposit of money is made, the memo-
randum thereof should follow the term of the con-
dition of the bond.

APPEAL, REFERENCE AND REVIEW.

(Title.)

The above-named appeals to the Court at _____ from the decree of _____ in Suit No. _____ of 19____, dated the _____ day of _____ 19____, and sets forth the following grounds of objection to the decree appealed from namely :—

(Title.)

This security bond on stay of execution of decree
executed by witnesseth :—

That _____, the plaintiff in Suit No. _____ of 19____, having sued _____, the defendant, in this Court and a decree having been passed on the _____ day of _____ 19____ in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the _____ Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. _____, mortgaging the properties specified

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs.

mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this
day of 19 .

Schedule.

Witnessed by

(Signed)

- 1.
- 2.

No. 4.—SECURITY FOR COSTS OF APPEAL. (O. 41, r. 10.)

(Title.)

To

This security bond for costs of appeal executed by _____ witnesseth:—

This appellant has preferred an appeal from the decree in Suit No. _____ of 19 _____, against the respondent, and has been called upon to furnish security. Accordingly I, of my own free will, stand security for the costs of the appeal,

mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realized from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this

day of 19 .

Schedule.

Witnessed by

(Signed)

- 1.
- 2.

NO. 5.—INTIMATION TO LOWER COURT OF ADMISSION
OF APPEAL. (O 41, r. 13.)

(Title.)

To

You are hereby directed to take notice that
the in the above suit, has preferred
an appeal to this Court from the decree passed by
you therein on the day of 19 .

You are requested to send with all practicable
despatch all material papers in the suit.

Dated the day of 19 .

Judge.

App. G.] APPEAL, REFERENCE AND REVIEW.

**No. 6.—NOTICE TO RESPONDENT OF THE DAY FIXED
FOR THE HEARING OF THE APPEAL. (O. 41, r. 14.)**

(Title.)

APPEAL from the _____ of the Court of
dated the _____ day of _____ 19__.

To

Respondent.

TAKE notice that an appeal from the decree of _____ in this case has been presented by _____ and registered in this Court, and that the _____ day of _____ 19 ____ has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided in your absence.

GIVEN under my hand and the seal of Court,
this day of 19.

Judge.

[Note.—If a stay of execution has been ordered, intimation should be given of the fact on this notice.]

NO. 7.—NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT. (O. 41, r. 20.)

(Title.)

To

WHEREAS you were a party in Suit No. _____
of 19____, in the Court of _____

and whereas the
has preferred an appeal to this Court

from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal:

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the day of 19 , at A.M. If no appearance is made on your behalf on the said day and at the said hour, the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

No. 8.—MEMORANDUM OF CROSS OBJECTION.
(O. 41, r. 22.)

(Title.)

WHEREAS the has preferred an appeal to the Court at from the decree of in Suit No. of 19 , dated the day of 19 , and whereas notice of the day fixed for hearing the appeal was served on the on the day of 19 , the files this memorandum of cross objection under rule 22 of Order ALI of the Code of Civil Procedure, 1908, and sets forth the following grounds of objection to the decree appealed from, namely :—

No. 9.—DECREE IN APPEAL. (O. 41, r. 35.)

(Title.)

Appeal No. of 19 from the decree of the Court of dated the day of 19 .

Memorandum of Appeal.

Plaintiff.

Defendant.

The above-named appeals to the Court at _____ from the decree of _____ in the above suit, dated the _____ day of _____ 19____, for the following reasons, namely:—

This appeal coming on for hearing on the
day of 19 , before ,
in the presence of for the appellant and of
for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs. _____, are to be paid by _____. The costs of the original suit are to be paid by _____.

GIVEN under my hand this day of 19' ,

Judge.

Costs of Appeal.

Appellant.	Amount.	Respondent.	Amount.
	RS.		RS. A. P.
1. Stamp for memorandum of appeal		Stamp for power..	
2. Stamp for power.		Lo for petition	
3. Service of processes		Service of processes	
4. Pleader's fee on Rs.		Pleader's fee on Rs.	
Total...		Total...	

RS.	RS. A. P.
1. Stamp for memorandum of appeal	Stamp for power..
2. Stamp for power.	Lo for petition
3. Service of processes	Service of processes
4. Pleader's fee on Rs.	es Pleader's fee on Rs.
Total...	Total...

No. 10.—APPLICATION TO APPEAL IN FORMA PAUPERIS.
(O. 44, r. 1.)

(Title.)

I the above-named,
present the accompanying memorandum of appeal
from the decree in the above suit and apply to be
allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof.

Dated the day 19 .

(Signed.)

Note.—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

No. 11.—NOTICE OF APPEAL IN FORMA PAUPERIS.
(O. 44, r. 1.)

(Title.)

WHEREAS the above-named has applied
to be allowed to appeal as a pauper from the decree
in the above suit dated the day of
19 and whereas the day of
19 has been fixed for hearing the application,
notice is hereby given to you that if you desire to
show cause why the applicant should not be allow-
ed to appeal as a pauper an opportunity will be
given to you of doing so on the aforementioned date.

GIVEN under my hand and the seal of the Court,
this day of 19 .

**No. 12.—NOTICE TO SHOW CAUSE WHY A CERTIFICATE OF
APPEAL TO THE KING IN COUNCIL SHOULD NOT BE
GRANTED. (O. 45, r. 3.)**

(Title.)

To

TAKE notice that
has applied to this Court for a certificate that as
regards amount or value and nature the above case
fulfils the requirements of section 110 of the Code
of Civil Procedure, 1908, or that it is otherwise a
fit one for appeal to His Majesty in Council.

The day of 19
is fixed for you to show cause why the Court should
not grant the certificate asked for.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Registrar.

**No. 13.—NOTICE TO RESPONDENT OF ADMISSION OF
APPEAL TO THE KING IN COUNCIL. (O. 45, r. 8.)**

: (Title.)

To

WHEREAS the
 in the above case, has furnished the
security and made the deposit required by Order
XLV, rule 7, of the Code of Civil Procedure, 1908 :

Take notice that appeal of the said
to His Majesty in Council has been admitted on
the day of 19 .

GIVEN under my hand and the seal of the Court,
this day of 19 .

No. 14.—NOTICE TO SHOW CAUSE WHY A REVIEW
SHOULD NOT BE GRANTED. (O. 47, r. 4.)

(Title.)

To

TAKE notice that _____ has
applied to this Court for a review of its decree
passed on the _____ day of
19 _____ in the above case. The
day of _____ 19 _____ is fixed for you to
show cause why the Court should not grant a review
of its decree in this case.

GIVEN under my hand and the seal of the Court,
this _____ day of _____ 19 _____.

Judge.

APPENDIX H.

MISCELLANEOUS.

No. 1.—AGREEMENT OF PARTIES AS TO ISSUES TO BE
TRIED. (O. 14, r. 6.)

(Title.)

WHEREAS we, the parties in the above suit, are
agreed as to the question of fact [*or of law*] to be
decided between us and the point at issue between
us is whether a claim founded on a bond, dated the

_____ day of _____ 19 _____
and filed as Exhibit _____ in the
said suit, is *or is not* beyond the statute of limitation
(*or state the point at issue whatever it may be*):

. We therefore severally bind ourselves
that, upon the finding of the Court in the negative
[*or affirmative*] of such issue _____ will

pay to the said the sum of Rupees
 (or such sum as the Court shall hold to be due
 thereon) and I, the said will accept
 the said sum of Rupees (or such sum as
 the Court shall hold to be due) in full satisfaction
 of my claim on the bond aforesaid [or, that upon
 such finding I, the said will do
 or abstain from doing, etc., etc.].

Plaintiff.

Defendant.

Witnesses.

1.

2.

Dated the day of 19 .

No. 2.—NOTICE OF APPLICATION FOR THE TRANSFER OF
 A SUIT TO ANOTHER COURT FOR TRIAL.

(SECTION 24.)

In the Court of the District Judge of
 No. of 19 .

To

WHEREAS an application dated the
 day of 19 has been made to
 this Court by the
 in Suit No. of 19 now pending
 in the Court of the at in
 which is plaintiff and
 is defendant, for the transfer of the suit for trial to
 the Court of the at :—

You are hereby informed that the
 day of 19 has been fixed for
 the hearing of the application, when you will be
 heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court,
 this day of 19 . .

Judge.

No. 3.—NOTICE OF PAYMENT INTO COURT.

(O. 24, r. 2.)

(Title.)

TAKE notice that the defendant has paid into Court Rs. _____ and says that that sum is sufficient to satisfy the plaintiff's claim in full.

X, Y, Pleader for the defendant.

To Z, Pleader for the plaintiff.

No. 4.—NOTICE TO SHOW CAUSE. (GENERAL FORM.)

(Title.)

To

WHEREAS the above-named _____ has made application to this Court that _____ ;

You are hereby warned to appear in this Court in person or by a pleader duly instructed on the _____ day of _____ 19____, at _____ o'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte*.

GIVEN under my hand and the seal of the Court, this _____ day of _____ 19____.

Judge.

No. 5.—LIST OF DOCUMENTS PRODUCED BY

(O. 13, r. 1.)

(Title.)

No.	Description of document.	Date, if any, which the document bears.	Signature of party or pleader.
1	2	3	4

**No. 6.—NOTICE TO PARTIES OF THE DAY FIXED FOR
EXAMINATION OF A WITNESS ABOUT TO LEAVE
THE JURISDICTION. (O. 18, r. 16.)**

(Title.)

To

plaintiff (or defendant).

WHEREAS in the above suit application has been made to the Court by _____ that the examination of _____, a witness required by the said _____ in the said suit, may be taken immediately; and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's jurisdiction (*or any other good and sufficient cause, to be stated*):

Take notice that the examination of the said witness will be taken by the Court on the day of 19 .

Dated the day of 19 .

Judge.

No 7.—COMMISSION TO EXAMINE ABSENT WITNESS.
(O. 26, rr. 4, 18.)

(Title.)

To

WHEREAS the evidence of _____ is required by the _____ in the above suit; and whereas _____; you are requested to take the evidence on interrogatories [or *vis à voce*] of such witness _____ and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at _____

liberty to question the witness on the points specified and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

No. 8.—LETTER OF REQUEST. (O. 26, r. 5.)

(Title.)

(Heading:—To the President and Judges of, etc.,
etc., or as the case may be.)

WHEREAS a suit is now pending in the
in which A. B. is plaintiff and C. D. is
defendant; and in the said suit the plaintiff claims
(abstract of claim);

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say :

E. F., of	
G. H., of	and
I. J., of	

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court ;

Now I , as the of the said Court, have the honour to request, and do hereby request, that

for the reasons aforesaid and for the assistance of the said Court, you as the President and Judges of the said or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *vivâ voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses to the said Court.

(NOTE.—If the request is directed to a Foreign Court, the words “through His Majesty’s Secretary of State for Foreign Affairs for transmission” should be inserted after the words “other witnesses” in the penultimate line of this form.)

**No. 9.—COMMISSION FOR A LOCAL INVESTIGATION, OR
TO EXAMINE ACCOUNTS. (O. 26, rr. 9, 11.)**

(Title.)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for

should be issued ; you are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. _____, being your fee in the above, is herewith forwarded

GIVEN under my hand and the seal of the Court
this _____ day of _____ 19 .

Judge.

No.10.—COMMISSION TO MAKE A PARTITION.(O.26,r.13.)

(Title.)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the

day of _____ 19 , You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be

necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. _____, being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court,
this _____ day of _____ 19 . . .

Judge.

No. 11.—NOTICE TO MINOR DEFENDANT AND GUARDIAN.
(O. 32, r. 3.)

(*Title.*)

To

Minor Defendant.

Natural Guardian.

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant, you, the said minor, and you (1)

[(1) Here insert the name of guardian]

are hereby required to take notice that unless within _____ days from the service upon you of this notice, an

application is made to this Court for the appointment of you (1) or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

GIVEN under my hand and the seal of the Court
this day of 19 .

Judge.

No. 12.—NOTICE TO OPPOSITE PARTY OF DAY FIXED
FOR HEARING EVIDENCE OF PAUPERISM. (O. 33, r. 6.)

(Title.)

To

WHEREAS has
applied to this Court for permission to institute a
suit against *in forma*
pauperis under Order XXXIII of the Code of Civil
Procedure, 1908; and whereas the Court sees no
reason to reject the application; and whereas the
day of 19
has been fixed for receiving such evidence as the
applicant may adduce in proof of his pauperism
and for hearing any evidence which may be adduced
in disproof thereof:

Notice is hereby given to you under rule 6 of
Order XXXIII that in case you may wish to offer
any evidence to disprove the pauperism of the
applicant, you may do so on appearing in this
Court on the said
day of 19 .

GIVEN under my hand and the seal of the Court,
this day of 19 .

**No. 13.—NOTICE TO SURETY OF HIS LIABILITY
UNDER A DECREE. (Section 145.)**

(Title.)

To

WHEREAS you did on become
liable as surety for the performance of any decree
which might be passed against the said
 defendant in the above suit; and whereas
a decree was passed on the
day of 19 .
against the said defendant for the payment of
 , and whereas
application has been made for execution of the said
decree against you:

Take notice that you are hereby required on or before the _____ day of _____ 19____ to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the times specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the Court,
this day of 19

Judge.

9.

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THE SECOND SCHEDULE.

ARBITRATION.

Arbitration in Suits.

1. Parties to suit may apply for order of reference.—(1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred.

2. Appointment of arbitrator.—The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

3. Order of reference.—(1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.

4. Where reference is to two or more, order to provide for difference of opinion.—(1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

(a) by the appointment of an umpire ; or

(b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail ; or

- (c) by empowering the arbitrators to appoint an umpire; or
- (d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

5. Power of Court to appoint arbitrator in certain cases.—(1) In any of the following cases, namely :—

- (a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or
- (b) where an arbitrator or umpire—
 - (i) dies, or
 - (ii) refuses or neglects to act or becomes incapable of acting, or
 - (iii) leaves British India in circumstances showing that he will probably not return at an early date, or
- (c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or um-

pire or make an order superseding the arbitration, and in such case shall proceed with the suit.

6. Powers of arbitrator or umpire appointed under paragraph 4 or 5.—Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

7. Summoning witnesses and default.—(1) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

8. Extension of time for making award.—Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

9. Where umpire may arbitrate in lieu of arbitrators.—Where an umpire has been appointed, he may enter on the reference in the place of the arbitrators,—

(a) if they have allowed the appointed time to expire without making an award, or

- (b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

10. Award to be signed and filed.—Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

11. Statement of special case by arbitrators or umpire.—Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

12. Power to modify or correct award.—The Court may, by order, modify or correct an award,—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be separated from the other part and does not affect the decision on the matter referred; or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or
- (c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

13. Order as to costs of arbitration.—The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

14. Where award or matter referred to arbitration may be remitted.—The Court may remit the award or any matter referred to arbitration to the re-consideration of the same arbitrator or umpire, upon such terms as it thinks fit,—

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred ;
- (b) where the award is so indefinite as to be incapable of execution ;
- (c) where an objection to the legality of the award is apparent upon the face of it.

15. Grounds for setting aside award.—(1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to re-consider it. But no award shall be set aside except on one of the following grounds, namely :—

- (a) corruption or misconduct of the arbitrator or umpire ;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire.
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding

with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1) the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

16. Judgment to be according to award.—(1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

(2) Under the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with the award.

Order of reference on agreements to refer.

17. Application to file in Court agreement to refer to arbitration.—(1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

18. Stay of suit where there is an agreement to refer to arbitration.—Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court, to stay the suit; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

19. Provisions applicable to proceedings under paragraph 17.—The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 17, shall be applicable to all proceedings under the order of reference made by the Court under that paragraph, and to the award and to the decree following thereon.

*Arbitration without the intervention of a Court.***20. Filing award in matter referred to arbitration without intervention of Court.—**(1)

Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

21. Filing and enforcement of such award.

—(1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is proved, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

22. Exclusion of certain words in the Specific Relief Act, 1877.—The last thirty-seven words of section 21 of the Specific Relief Act, 1877, (1 of 1877), shall not apply to any agreement to refer to arbitration, or to any award, to which the provisions of this schedule apply.

of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the day of 19 , and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Liberty to apply.

GIVEN under my hand and the seal of the Court
this day of 19 .

Judge.

NO. 3.—ORDER FOR APPOINTMENT OF NEW ARBITRATOR.

(*Title of suit.*)

WHEREAS by an order, dated the day of 19 [*state order of reference and death, refusal, etc., of arbitrator*], it is by consent ordered that Z be appointed in the place of X (deceased, or as the case may be) to act as arbitrator with Y, the surviving arbitrator, under the said order, and it is ordered that the award of the said arbitrators be made on or before the day of 19 .

GIVEN under my hand and the seal of the Court,
this day of 19 .

Judge.

NO. 4.—SPECIAL CASE.

(*Title of suit.*)

In the matter of an arbitration between A. B. of and C. D. of the following special case is stated for the opinion of the Court:—

[*Here state the facts concisely in numbered paragraphs.*]

THE THIRD SCHEDULE.

EXECUTION OF DECREES BY COLLECTORS.

1. Powers of Collector.—Where the execution of a decree has been transferred to the Collector under section 68, he may—

- (a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree ; or
- (b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging the whole or any part of the property ordered to be sold ; or
- (c) sell the property ordered to be sold or so much thereof as may be necessary.

2. Procedure of Collector in special cases.—Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

3. Notice to be given to decree-holders and to persons having claims on property.—(1) In any such case as is referred to in paragraph 2, the

Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—

- (a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;
- (b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

4. Amount of decrees for payment of money to be ascertained, and immoveable property available for their satisfaction.—(1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding

such inquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

5. Where District Court may issue notices and hold inquiry.—The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the

District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

6. Effect of decision of Court as to dispute.

—The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

7. Scheme for liquidation of decrees for payment of money.—(1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

- (a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or,
- (b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest (notwithstanding the original order for sale)—
 - (i) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or
 - (ii) by mortgaging the whole or any part of such property; or
 - (iii) by selling part of such property; or
 - (iv) by letting on farm, or managing by himself or another, the whole

or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector purposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistent with the Act as may, from time to time, be made in this behalf by the Local Government.

8. Recovery of balance (if any) after letting or management.—Where, on the expiration of the

letting or management under paragraph 7, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

9. Collector to render accounts to Court.—

(1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all monies which came to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

- (a) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case
 - of each member as the Court thinks fit; and

- (b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct; or
- (c) where the Collector has proceeded under paragraph 2,—
 - (i) in keeping down the interest on incumbrances on the property;
 - (ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistence to such amount as the Court thinks fit; and
 - (iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other person as the Court directs.

10. Sales how to be conducted.—Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

- (a) fix a reasonable reserved price for each lot;

- (b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment necessary for the purpose of obtaining a fair price for the property ;
- (c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

11. Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.—(1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except, with the written permission of the Collector nor shall any Civil Court issue and process against such property or part in execution of a decree for the payment of money.

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of the paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

12. Provision where property is in several districts.—Where the property of which the sale has been ordered is situate in more^d districts than one, the powers and duties conferred and imposed

on the Collector by paragraphs 1 to 10 shall be exercised and performed by such one of the Collectors of the said districts as the Local Governments may by general rule or special order direct.

13. Powers of Collector to compel attendance and production.—In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

THE FOURTH SCHEDULE.

(See section 155.)

ENACTMENTS AMENDED.

			3	4
Year.	No.	Short title.	Amendment.	
1870	VII	The Court-fees Act, 1870.	In article 1 of Schedule I, after the word "plaint" the words "written statement pleading a set-off or counter-claim" and after the word "Act" the words "or of cross-objection" shall be inserted.	
			From article 11 of Schedule II the words "from an order rejecting a plaint or" shall be omitted.	
			For the entry in the first column of Schedule II relating to article 19 the following entry shall be substituted, namely:—	
			"Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.	

THE FIFTH SCHEDULE.

(See section 156.)

ENACTMENTS REPEALED.

Year.	No.	Subject or short title.	Extent of repeal.
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Acts of the Governor-General in Council.

1870	VII	The Court-fees Act 1870.	Section 16, and article 15 of Schedule II.
1882	IV	The Transfer of Property Act, 1882.	Sections 85 to 90 inclusive, 92 to 94 inclusive, 96, 97, 99 and in section 100 the words "and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property."
"	XIV	The Code of Civil Procedure.	The whole Act.
"	XV	The Presidency Small Cause Courts Act, 1882.	The last paragraph of section 3.
1888	VI	The Debtors Act, 1888.	Sections 2 to 8.
"	VII	The Civil Procedure Code Amendment Act, 1888.	So much as is unrepealed, except section 1, section 65 and section 66, subsections (1), (3) and (4).
"	X	The Presidency Small Cause Courts Law Amendment Act, 1888.	So much as is unrepealed.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.

Acts of the Governor General in Council.

1890	VIII	The Guardian and Wards Act, 1890.	Section 53.
1891	XII	The Repealing and Amending Act, 1891.	So much as relates to Act XIV of 1882 and Act VII of 1888.
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.	In the title and preamble the words "and the Code of Civil Procedure" and sections 2, 3 and 4.
1894	V	The Civil Procedure Code Amendment Act, 1894.	The whole Act.
1895	VII	The Punjab Laws Act Amendment Act, 1895.	Sections 1 and 2.
"	XIII	The Civil Procedure Code Amendment Act, 1895.	The whole Act.
1900	VI	The Lower Burma Courts Act, 1900.	So much of the schedules as relates to Act XIV of 1882.

STATEMENT OF OBJECTS AND REASONS.

The Bill is sufficiently explained in the Report of the Special Committee printed below.

H. ERLE RICHARDS.

Simla, 3rd September 1907.

*Report of the Special Committee appointed to consider
the amendment of the Civil Procedure Code.*

We have the honour to present this report on the proposals to amend the Code of Civil Procedure which have been submitted for our consideration by the Government of India and, annexed to it, a draft Bill amended by us. A detailed account of the alterations introduced in the Bill will be found in the Notes on Clauses which form the second part of this Report, but we desire by way of preface to make some observations of a general character on the defects in the existing law which appear to us to call for reform and on the more important of those alterations.

1. The Code of Civil Procedure of 1882 has been in force for 25 years and the experience of those years has shown that the general lines on which it proceeds are sound. The matters in which it has proved defective are for the most part matters of detail, and they arise, as it seems to us, mainly from the fact that it is impossible to frame a fixed and rigid Code in such a manner as to sufficiently meet the varying needs of an area so diversified as that to which the Code applies. In our opinion it is essential that there should be some machinery to enable variations to be introduced in procedure to

meet the different requirements of different localities as well as to enable defects to be remedied as they are discovered without resort to the tardy process of legislation. We propose to make provision for these purposes by a re-arrangement of the Code. We recommend that matters of mere machinery should be relegated to rules capable of alteration by each High Court, subject to certain checks, and that those provisions only should be retained in the body of the Code in which some degree of permanence and uniformity is desirable. This re-arrangement is in accordance with precedent and possesses advantages so obvious that it is needless to enlarge upon them.

2. The objection—and as it appears to us the only objection of substance—that can be urged against this proposal is that until the scheme of distribution has become familiar to those who have to administer the Act the change may cause some confusion and the familiar numerical references to the present sections will no longer apply. We are sensible that some inconvenience must arise from this cause in the first instance, but this is but a small disadvantage in comparison with the advantages to be obtained by the change, and we cannot think that anyone will seriously contend that such a slight and temporary drawback should stand in the way of a reform which appears to us in other respects to be wholly beneficial.

3. The adoption of this principle has necessarily involved a departure from the arrangement of the present Code, but in other respects we have advisedly adhered as closely as possible to the existing language, the meaning of which is now well understood by Courts and by practitioners. Speaking generally, it may be said that we have only depart-

ed from the phraseology of the Code where experience has suggested improvements or competent authority has called for some change. We have refrained from altering the wording merely because it might be capable of improvement: for in any change, even of a verbal character, there is a risk of opening a door to fresh litigation. In the amendments that we have introduced we have endeavoured to state general rules of procedure rather than to provide in detail for every possible contingency; for we hold it to be a sound view that excessive elaboration of details of procedure tends to cramp the actions of the Court and in consequence to encourage technicalities. For this reason we have made no attempt to embody in the Code a digest of the very numerous decisions on the existing sections: we have made amendments to meet case law only on points on which there is a conflict of authority. And in this connection we desire to point out that at the present time there is even less justification for the enactment of elaborate provisions in regard to procedure than at the time when the Code of 1882 was passed. Since then the standard of legal efficiency in the mofussil has been materially raised, and the principles of procedure are now so well understood that the Courts may be trusted to apply them intelligently in cases for which no provision may be made in terms.

But although we have made the present Code the basis of our draft, we have carefully examined the Bill settled by the Select Committee in 1903, and we desire to express our acknowledgments to that Committee for the store of information it contains, and for the materials collected in their Report.

Apart from the re-arrangement to which reference has been made we have not introduced many changes of a radical character into the Code.

4. The general nature of some of the amendments we recommend may be conveniently illustrated by a brief examination of the extent to which the various stages of a suit will be affected by them.

A. To begin with it is hoped that the multiplicity of suits will be further curtailed by the new provisions we have inserted to remove limitations which we regard as needless on the comprehensiveness of a suit, and by the wider powers of amendment vested in the Courts under the Bill. An adequate check is provided by the power of a Court to interfere where embarrassment is likely to result.

B. Increased facilities have been given for the service of process to which further reference is made in the Notes on Clauses. It is hoped that in the gradual introduction of service by post may be found a solution of one of the principal defects in our legal system.

C. In our opinion it is most necessary that litigants in this country should come to trial with all issues clearly defined, and that cases should not be expanded or grounds shifted without reference to the true facts. For this purpose we think that the present system of pleadings in the mofussil, which is notoriously lax, should be improved, and we have incorporated in the rules an Order on pleadings, which it is hoped will lead to sounder and fairer methods of arriving at the real points in dispute. The forms have been revised and we hope that they will be brought into more general use in the mofussil.

We have not been able within the time at our disposal to make these forms, or the other forms in the Appendix to Schedule I, complete: but this is a matter of detail which can be further considered before the Bill is passed into law.

D. It is not possible to secure expedition in the disposal of suits, unless the questions of fact on

which there is a real contest are narrowed down as far as possible. As a step towards this, we have incorporated in the rules an order in which provision is made for the admission not only of documents, but also of facts. It must be left to litigants and their advisers to make adequate use of this order: but it is hoped that the Courts will encourage the use of it, since it certainly affords a means whereby the two principal evils of litigation, delay and expense, can be materially diminished.

E. We attach much importance to a proper use being made by Courts in the disposal of the procedure prescribed for the first hearing. The Code as it stands makes provision for the examination of parties by the Court, and we have altered the language so as to compel the production of documents at the first hearing. In our opinion this will act as a substantial check on the fabrication of documentary evidence.

F. The provisions relating to the hearing of suits do not call for material alteration, but we have thought it well to provide expressly for the cases where a party dies between conclusion of the hearing and delivery of judgment. It would obviously be wrong that such an accident should in any way interfere with the disposal of the case, and we have therefore inserted a provision to enable judgment to be pronounced notwithstanding the death.

G. A change of importance has been made in regard to decrees. In the first place, we have inserted an express provision recognizing the distinction between preliminary and final decrees. We hope in this way to afford facilities for checking the delay that now results from the objectionable practice of leaving for determination in execution questions which should be decided by the decree. This change should ensure the more expeditious disposal of a

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class of suits which at present are conspicuous for the delay to which they give rise. Another amendment of importance which we have introduced is in regard to mortgage-suits. These are very numerous and involve complicated questions of law. Hitherto some confusion has been occasioned by the co-existence of the provisions of the Transfer of Property Act and of the Code in regard to execution in mortgage-suits. We think that the provisions regulating this matter should be dealt with in their entirety in the Code, and we have therefore introduced rules in Order XXXIV to give effect to our view. We propose that the sections of the Transfer of Property Act affected by this change should be repealed. We desire to call the attention of those Provinces to which that Act does not apply to the effect of these changes.

In our opinion it is expedient to give greater assistance to the Courts in the framing of decrees. The importance of this branch of procedure cannot be overrated; it is surrounded by difficulties which are a fruitful source of error and consequently of litigation. We have amplified the provisions of the Code to meet this defect, and have introduced some forms which can be adapted to meet the requirements of individual cases. We think that further forms might be added with advantage before the Bill becomes law.

H. Amongst other matters we have removed limitations which at present exist on the power of appointing Receivers, and have conferred a power to appoint Receivers on Subordinate Courts.

5. Execution.—The subject of execution is, perhaps, one of the most difficult with which we have had to deal. The present system, in the mofussil at any rate, tends to excessive delay and affords facilities for defeating the claims of creditors. At the same

time the creditor often has only himself to blame owing to his own laeher in prosecuting his rights. In the Presidency Town the same objections cannot be fairly raised; the system works well; whilst, in the mofussil, the difficulties arise not so much from the machinery itself, as from the defective manner in which it is worked. One of the most fruitful sources of litigation is the setting aside of execution sales, on the ground of irregularity in the publication of the sale proclamation. It is notorious that in many of these cases the Court's officer, either through negligence or dishonesty, has not duly published the proclamation, but it is impossible to deal with such cases by any provision in a Code. After a most careful consideration of the subject, we have not seen our way to any very drastic changes in the present system. We have found ourselves unable to accept the somewhat far-reaching proposal of the Committee of 1902 in relation to the execution of decrees by precept: but we are so far in accord with the view expressed by that Committee as to have been able to insert in the Bill a clause which enables the Court which passed the decree to issue a precept to any other Court to attach property of the judgment-debtor, pending execution in the ordinary course. Beyond this we have felt we could not safely go.

We anticipate that there will be a substantial saving of time, and consequent expense, from the provision requiring that mesne profits shall be ascertained by the Court under the decree itself, and not as now in execution proceedings.

Clause 53 has been introduced to settle a long mooted point upon which there is much diversity of Judicial opinion, as to whether or not questions as to the liability of ancestral property in the hands of a son or other descendant to whom it has

come otherwise than by descent for the payment of the debt for which the decree was passed, can be determined under clause 47 of the present Bill, corresponding with section 244 of the existing Code. We think they should be.

Other amendments deserving notice relate to (1) the power to break open the outer door of the judgment-debtor's dwelling house ; (2) the date from which the purchaser's title accrues ; (3) oral application for immediate execution ; (4) the discretion of the Court in the execution of decrees for the restitution of conjugal rights ; (5) execution against partnership property ; (6) extended facilities for attaching salaries ; and (7) powers to decree-holders to carry decrees into effect at the expense of the judgment-debtor.

We regard the changes made in relation to execution as calculated to materially assist the judgment-creditor in recovering the fruits of his judgment.

6. Arbitration.—Two questions of importance have arisen in connection with this subject: (1) should any of the sections of the Arbitration Act of 1899 be incorporated into the Code ; (2) should the right of appeal, as now existing, be altered, and if so, in what direction ? We are of opinion that the best course would undoubtedly be to eliminate from the Code all the clauses as to arbitration, and insert them in a new and comprehensive Arbitration Act. There are, perhaps, difficulties as to this at present. We have determined therefore to leave the arbitration clauses much as they are in the present Code but we have placed them in a Schedule in the hope that at no distant date they may be transferred into a comprehensive Arbitration Act.

In regard to appeals, some change has been made. Upon this question, adopting the view of the Judi-

cial Committee as expressed in Ghulam's case (I. L. R., 29 Cal., 167) we are strongly in favour of finality in cases of arbitration. If rights of appeal be given, the disappointed party will take advantage of every such right. To meet the difficulty expressed in the case reported in I. L. R., 25 Cal., 141 (which followed many other cases in the Calcutta High Court), we have inserted the words "or being otherwise invalid" in sub-section (c) of section 521 of the present Code. If, therefore, either party considers the award is invalid on any ground, he can apply to have it set aside. We have thought it right to give one appeal from the opinion expressed by the Court on a special case under section 517, and to allow one appeal as from order under sections 521, 523 and 526. And having regard to the rather wide language of the Judicial Committee in Ghulam's case, we have further thought it advisable to make it clear that an order granting an application either under section 523 or 526 is not to be deemed a decree within the meaning of the Code; otherwise there would be a wider right of appeal from orders under these sections than from a decree under section 522. The other alterations deal with the text, rather than with any question of policy or principle.

7. *Suits relating to public matters.*—We have inserted a clause to enable actions for public nuisances to be brought, with the consent of the Advocate-General, irrespective of special damage. It has been represented to us that such a power is needed and we concur in that view.

8. *Public charities.*—The suggestion has been made on high authority that some express reference should be made in the Code to the power of the Court to apply the Cy-pres doctrine in the settling of schemes. But this power would appear to exist.

already within its proper limits (*Mayor of Lyons'* case, L. R., 3 I. A., 32) and we do not think it necessary to make express reference to it.

It has been represented to us by more than one gentleman whose opinion is entitled to weight, that the power to enquire into the affairs of public charities should be made more extensive. The clause, as it stands, gives sufficient powers to the Courts to direct accounts and to frame schemes when once a suit has been instituted, but it is said that members of the public interested in any public charity ought to have the means of calling for and inspecting accounts without undertaking the burden of a suit, at least in the first instance. We are told that revenues derived from charitable trusts are in some cases very large in amount: that no accounts of their expenditure are ordinarily rendered, and that there is good ground for believing that a considerable portion is misspent or squandered on useless objects.

The Hon'ble Dr. Rashbehary Ghose supports these views and has submitted a clause to give effect to them. It is in the following terms:—

“93-A. (1) The Court may also, upon an application by any two or more persons having the like interest and having obtained the like consent, direct any trustee of such charity to cause to be prepared and filed in the Court, within such time as may be specified in the order, a detailed account of the receipts and disbursements in connection with the trust property for a period not exceeding three years next preceding the date of the application.

(2) Such accounts, when filed in Court, shall be open to inspection by the public.

- (3) A trustee who fails to comply with any such direction shall be removed if a suit for that purpose be instituted, unless he can show good cause for such failure."

We have given to the subject our best consideration and desire to record our sympathy with the motives of the proposers. But we have not inserted the clause in the Bill because we think that the question is one of policy on which the public opinion of the communities interested should first be obtained. It affects primarily, as we understand, the Hindu and, to a less extent, the Muhammadan community. And we should not feel justified in recommending an amendment of the law on such a subject as this, unless the leaders of those communities were to express their support of the proposal in unequivocal terms. If it is eventually decided to adopt the amendment, then we think that the clause proposed by Dr. Ghose may be accepted.

9. Suits by or against firms.—Attention is directed to the new provision in regard to suits by or against firms (Order XXX), which will, we hope, prove acceptable to the commercial community.

10. New procedure.—We have given power to provide by Rules for Counterclaims, Third Party Procedure, Summary Procedure in suits for debt or liquidated demands, as, for instance, rent, or any other definite sum payable under a contract and Originating summons. We are of opinion that these forms of proceeding may usefully be adopted in some areas, but that this is a matter which should be left for each High Court to decide.

11. Appeals.—As regards appeals from original decrees we have departed but slightly from the

existing Code. We have thought it advisable to give legislative sanction to the view that no appeal shall lie from a consent decree, or as to costs, except by leave of the Court: but the most important change is that incorporated in clause 97, which renders it obligatory upon a party, who considers himself aggrieved by a preliminary decree, to appeal from that decree, at the risk of being precluded from disputing its correctness on an appeal from the final decree. We feel strongly that this is a most useful provision, as tending to that which is so desirable, *viz.*, finality in litigation.

As regards appeals from appellate decrees the only substantial departure from the existing Code is the insertion of clause 103. Experience has shown the desirability of this clause, the effect of which will be to avoid remands, with their consequent delay and expense.

As regards appeals from orders a comparison of clause 104 of the Bill with section 588 of the existing Code would support a *prima facie* inference that the right of appeal from Orders had been materially curtailed. But this inference is dispelled on looking at sub-clause (*h*) of clause 104 which allows an appeal from any Order made under Rules from which an appeal is expressly allowed by Rules. We have gone carefully into the question of the cases in which an appeal should be allowed from these Orders and our conclusion is expressed in the Rules themselves.

12. Rules.—The distribution of the provisions of the Code between the body of the Bill and the Rules is a matter on which opinions may well differ. The general principle on which we have proceeded has been to keep in the body of the Bill those provisions which appear to us to be fundamental and those provisions which confer powers

operating outside the Province in which the Court is situated. In some cases we have adopted the plan of inserting leading provisions in the Bill, stating in general terms the powers of the Court, and of leaving the details to Rules; in matters of less importance the provisions have been relegated altogether to Rules. The result of this re-arrangement is to reduce the Act, as distinct from Schedules, to 155 clauses. The existing order of sequence has, speaking generally, been maintained, but the reduced bulk of the Bill has rendered it no longer necessary to reproduce the division into Chapters.

It is proposed to vest the power of making Rules in High Courts, subject to the control of Local Governments (or, in the case of the Calcutta High Court, of the Government of India), but we think it most desirable that in exercising this power the Courts should have the advice of representatives of the various branches of the legal profession, and we have accordingly provided that, in the case of Chartered High Courts and of Chief Courts, Rules shall only be made after those Courts have taken the opinion of a Rule Committee on which there will be representatives of the Bar, of Vakeels or Pleaders and, in Presidency-towns, of Attorneys. In the case of other High Courts power has been given to establish such Rule Committees as the Governor General in Council may determine. It is believed that Standing Committees of this kind will be of great value. We have thought it better to require the same sanction as is required by the Indian High Courts Act of 1861, in order that the rule-making power should correspond with the power conferred under that Act; but we are of opinion that, in the interest of uniformity, it is expedient that all amendments of Rules should be communicated to the Government of India and to other

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High Courts before sanction is given to them. This, we understand, can be effected by executive order.

If our proposal is adopted, it will probably be useful to publish annually in every Province some manual corresponding to the English "Annual Practice" containing:—

(1) the Act;

(2) all rules of procedure made under it or under other Acts in the Province;

(3) notes of decisions on the Act and Rules.

13. We are sensible that there may be defects and flaws in the Bill which we append to this Report. The subject is complicated and technical and the time at our disposal has been limited. We do not doubt therefore that much improvement may be made in the Bill before it is finally passed into law. But in our opinion it is framed on the right lines. We believe for the reasons we have stated that in any reform of Civil Procedure it is essential to introduce some elasticity, to give wider powers of control to the High Courts, and to invest them with a larger discretion in regard to the conduct of cases which come before them. Mr. Dikshit, Subordinate Judge from Bombay, has been present throughout our deliberations, and we take this opportunity of acknowledging the help we have derived from his experience of the working of the Code in the mofussil. We desire also to record our acknowledgments of the services of Mr. Law, of the Legislative Department, who has attended to the clerical and press work to our entire satisfaction.

(Signed) H. ERLE RICHARDS.

(„) FRANCIS MACLEAN.

(„) LAWRENCE JENKINS.

(„) S. ISMAY.

(„) RASHBEHARY GHOSE.

Sinla, August 31st, 1907.

NOTES ON CLAUSES.

A.—CLAUSES OF BILL.

Preliminary.

Clause 2.—The definitions have been re-arranged in alphabetical order.

Decree.—The importance of the definition of the word “decree” rests on the fact that by reference to it the right of appeal is determined. The Committee have in the main adhered to the existing definition; but they have modified it in two respects, and this has involved a slight recasting of the language. The principal modification aims at permitting an appeal from an adjudication which purports to settle the rights of the parties, though it does not completely dispose of the suit. Such an adjudication the Committee describe as a preliminary decree.

The *explanation* is intended to make it clear that a decree may be partly final and partly preliminary. Thus a decree for the recovery of possession of immoveable property and for mesne profits would be of this mixed character.

The word “within” has been substituted for “mentioned or referred to in” with a view to bringing within the definition of decree orders against sureties (see clause 142) and orders as to court-fees in pauper suits (see Order XXXIII, rule 13) and thus providing for appeals therefrom.

The only other modification is for the purpose of excluding a right of appeal from an order of dismissal for default.

Legal representative.—We have inserted a definition of “legal representative”—an expression which has been variously interpreted by the High

Courts as would appear from the reported cases which are not easily reconcilable with one another. See 8 C.W.N., 843, in which almost all the earlier cases are reviewed.

The Committee trust that the definition which has been added by them will set at rest what owing to the absence of any such definition from the present Code is a somewhat debatable point.

Mesne profits.—The Committee have altered the definition of “mesne profits” so as to exclude from the calculation any increased rents and profits due to improvements made by the person in wrongful possession for which he cannot at present claim compensation from the rightful owner either by way of mitigation of damages or otherwise.

Clause 4.—The clause as drafted will, it is believed, effect all the savings covered by section 4 of the Code. The concluding paragraph of that section is believed to be obsolete and has accordingly not been reproduced. On this point the opinions of Local Governments are invited.

Clause 6.—In view of the extended scope of clause 4 the reproduction of sections 6 and 7 (except as to the final paragraph of section 6) does not appear to be necessary.

The words “or proceedings in suits” have been introduced in this clause to negative the view that a Court to which a decree is sent for execution has jurisdiction to execute the decree though the amount exceeds the limits of the pecuniary jurisdiction of the Court, a point on which there is a conflict of opinion (I.L.R., 17 Mad., 309; I.L.R., 16 Cal., 465, 457).

Clause 7.—The provisions as to Provincial Small Cause Courts have been re-arranged in what is hoped is a more convenient form.

PART I.—SUITS IN GENERAL.

The provisions contained in section 10 of the Code were first enacted by Act XI of 1836 and were reproduced in the Code of 1859 and in subsequent Codes. In the opinion of the Committee their retention is no longer necessary and they have been omitted.

Clause 11—Res judicata.—It is not possible to make a complete exposition of a subject so complex as that of *res judicata* within the limits of a section of an Act and the Committee think it better to re-enact section 13 as it stands in the Code with such modifications only as experience has shown to be necessary.

The Committee recognize that a proceeding does not come within the language of that section; but they think it better not to deal with this point in express terms for the reason that the applicability of the doctrine of *res judicata* to certain proceedings is not open to doubt, and they foresee that any express reference to proceedings in a crystallised definition might only lead to difficulties (L.R., 11 I.A., 37, and I.L.R., 29 Cal., 707).

The word “another” has been substituted for “former” as being more in conformity with Indian decisions.

Explanation I is new and is intended to affirm the view that the competence of the jurisdiction of a Court does not depend on the right of appeal from its decision.

Explanation VI.—The inclusion of *public rights* is to give due effect to suits relating to public nuisance (clause 91).

Clause 12.—This clause is new and is necessitated by the transfer of certain of the provisions of the existing Code to Rules.

Clause 13.—The provisions as to foreign judgment have been re-arranged and as it is hoped stated more clearly.

Section 14.—The last paragraph has been omitted. It appears to the Committee that it is not possible to maintain this distinction in the case of all Asiatic Courts. The Courts of Japan for instance are entitled to be treated on the same footing as European Courts. They know of no satisfactory distinction which could be drawn so to give effect to the intention of the existing provisions; and they recommend that the paragraph should be omitted and that Courts should rely on the powers given by clause 13.

Place of suing.—The provisions under this heading have been collected and re-arranged.

Clause 16 (a).—The insertion of the words “with or without rent or profits” is intended to remove any difficulty there may be where the defendant does not reside within the local limits of the Court within whose jurisdiction the property is situate.

Clause 18.—The Committee have added words to this clause in order still further to restrict the taking of technical objections as to jurisdiction.

Clause 20.—The Committee have omitted Explanation III of section 17, which has become unnecessary owing to the addition made to sub-clause (c) of the words “wholly or in part” in reference to the cause of action.

Clause 24.—The words “at any stage” have been added to remove the difficulty created by the view that a suit cannot be transferred after the hearing has once commenced, as to which there is a conflict of decision.

Clauses 26-35.—The provisions in Chapters III to XVIII of the present Code have been in the main

relegated to Rules, but such general provisions as are believed to be essential have been preserved in clauses 26 to 35.

Clause 32.—The Committee have omitted the last paragraph of section 136 of the Code as they think unnecessary to impose penal consequences for a default of the class indicated.

PART II.—EXECUTION.

Clauses 36-74.—The bulk of the provisions as to execution will be found in the Rules, but the main provisions as to the Courts by which decrees may be executed, the questions to be determined by Courts executing decrees, the limit of time for execution, transferees and legal representatives, procedure in execution, arrest and attachment, the delegation to Collectors of power to execute certain decrees, the distribution of assets and resistance to execution have been retained in the body of the Bill.

Clause 46.—Precept.—Though a system of execution based on precepts is in the opinion of the Committee open to grave objection, they think the idea may be utilized for the purpose of enabling a decree-holder to obtain an interim attachment where there is ground to apprehend that he may otherwise be deprived of the fruits of his decree. They have for this purpose introduced clause 46 into the Bill. They think it expedient to fix a time limit for the continuance of this interim attachment, but at the same time they have empowered the Court to extend the period to meet the exigencies of particular cases.

After careful consideration they have come to the conclusion that notwithstanding attachment under a precept, re-attachment on the ordinary application for execution will still be necessary.

Though at first sight it may appear a better course to provide that re-attachment shall not be necessary when the issue of a precept is followed by the ordinary application for execution, after careful consideration they have come to the conclusion that it will be safer to require re-attachment, having regard to the agency by which execution is carried into effect.

Clause 47.—The Committee have omitted sub-clauses (a) and (b) of section 244 of the existing Code because they are strongly of opinion that questions regarding the amount of any mesne profits or interest should be determined by the decree and not in execution. If this view is accepted it will be possible to exercise an effective control over the action taken by Subordinate Courts in dealing with such matters.

The Committee have redrafted sub-clause (3) and made it compulsory on the Court to determine questions arising as to representatives of parties. In their opinion it is inexpedient that separate suits should be instituted for the decision of such questions. The delay and expense involved are often very great and result in the needless protraction of litigation.

The explanation is intended to put an end to a conflict of judicial decisions.

Section 257A.—The Committee think that section 257A may be omitted with advantage. It was first enacted by Act XII of 1879 with a view to protect the interests of judgment-debtors against the exercise of undue pressure by decree-holders. The section has given rise to conflicting decisions, and as interpreted by the majority of the High Courts is found in practice to be of little service to judgment-debtors. Moreover, section 16 of the Indian Con-

tract Act as amended appears to the Committee to afford adequate protection where it is required.

Clause 51.—This clause states generally the powers of the Court in regard to execution leaving the details to be determined by rules. It will be observed that the power to direct immediate execution is no longer restricted to one class of suits but that it is now general in terms. Any limitation that may be found necessary will be imposed by rules.

Clause 53 has been added by the Committee in order to set at rest a question on which the High Courts are divided in opinion. It is true that where a son or grandson takes any ancestral property by survivorship he is bound to pay out of such property all debts of his ancestor not incurred for immoral or illegal purposes; but whether the creditor can follow the property in the hand of the son or grandson in execution is a debatable point under the Code. The question is merely one of procedure, and the Committee have come to the conclusion that any controversy between the parties with regard to the liability of the son or grandson to pay the debts of his ancestor should be determined in execution, it being open to them to raise any objection or defence in such proceedings which they might have raised in a separate suit instituted by the creditor, the clause in question not imposing upon them a greater liability than that imposed by the Hindu law.

Clause 55 (1). second proviso.—The object of this proviso is to prevent vexatious forms of resistance to execution which constantly obstruct decree-holders in the execution of their decrees.

Clause 55 (2).—This sub-clause is intended to cover the cases of certain persons or classes of persons whose summary arrest might, as in the case of rail-

way servants, be attended with danger or inconvenience to the public.

Clause 61.—The Committee have reproduced this clause from the former Bill (clause 269B) in accordance with what they understand to be the wishes of the Government. But the conditions should in their opinion be so modified as to relieve the Courts from fixing the portion to be released from attachment.

To impose this duty on the Courts would materially increase their work in a matter in regard to which they are not in a position to form the best opinion and would probably result in an undesirable lack of uniformity.

Clause 62.—The Committee have inserted a new provision to authorize the breaking open of the outer door of a judgment-debtor's house. They do not think that it would be safe to extend the operation of this provision to the house of a stranger.

Section 288—This section of the present Code first appears in the Code of 1877. It was not suggested by any decided case and the only explanation offered by the Select Committee, by whom it was introduced, is as follows:—

“ We think that the proclamation of execution sales should state the incumbrances (if any) to which the interest about to be sold is liable, and we have provided that no judge, etc., shall be answerable for error in the proclamation, unless it has been committed dishonestly.”

The Committee are of opinion that, having regard to the provisions of Act XVIII of 1850, the section may safely be omitted.

Clause 64.—An explanation has been added to make it clear that claims within the protection of

this clause include claims for rateable distribution of assets.

Clause 69.—The provisions as to Collectors have been placed in a separate schedule. They deal with a special matter and are not of general application.

Clause 73.—The Committee have slightly altered the wording of this clause in order to bring it into line with the Transfer of Property Act, 1882, section 96.

PART III.—INCIDENTAL PROCEEDINGS.

The general powers of Courts in regard to commissions have been summarised in clause 75 and the detailed provision will be found in the First Schedule.

PART IV.—SUITS IN PARTICULAR CASES.

The bulk of the corresponding part of the present Code will be found in the Rules. The provisions as to suits by aliens, etc., have been retained in the Bill and a few only of the provisions relating to suits by or against the Government. There is a general clause defining the nature of interpleader suits.

Clause 81.—The Committee think that the same measure of protection should be afforded to the defendant where Government undertakes the defence as where the Government makes no application for the purpose, and it appears to the Committee that the proper protection should be that the defendant should be exempt from mesne arrest and his property from mesne attachment. They therefore propose to strike out the proviso from clause 269 and to alter sub-clause (a) of clause 270 so as to give effect to this.

Clause 86 (2).—The Committee have inserted words in this sub-clause to make it clear that the decision of the Government is final and not open to question by the Court. A doubt had been raised on the point.

PART V.—SPECIAL PROCEEDINGS.

Arbitration and suits relating to public matters have been discussed in the former part of this Report.

Clause 92 (Public Charities).—As a doubt has been expressed in at least one reported decision whether section 539 is or is not mandatory, the Committee have thought it desirable, in order to settle this question, to introduce sub-clause (2).

PART VI.—SUPPLEMENTAL PROCEEDINGS.

Here again a leading provision has been retained in the Bill, and the details of procedure have been relegated to Rules.

PART VII.—APPEALS.

Clause 97.—The Committee have inserted an express provision to compel litigants to appeal from preliminary decrees, and have estopped them, on their failure to do so, from raising objections to such decrees in appeals from final decrees. On this point they accept the unanimous opinion of the Calcutta High Court. They think it unreasonable that parties should allow proceedings to be carried on to their final stage and large costs to be incurred if they intend to rely upon objections which could be taken at an earlier stage.

Clause 99.—The Committee have extended this clause in order to give the Courts a larger discretion in dealing with irregularities in proceedings,

and they have inserted express words to meet the point decided in I. L. R., 26 Bom., 259 and I. L. R., 27 Mad., 80, and in a recent decision of the Calcutta High Court.

Clause 100.—The Committee have struck out the word “specified” in the expression “specified law or usage”, as being in their opinion redundant.

Clause 105.—Though the remarks of the Privy Council in *Moheshur Sing v. The Bengal Government* (7 Moo. I. A., 283) are wide enough to embrace an appeal from an order of remand, the Committee think those orders were probably not in their Lordships’ contemplation when they condemned the view that a failure to appeal from an interlocutory order should deprive the person aggrieved of his right to object to such order when subsequently appealing from the decree. And the Committee think there are good reasons on the score of delay and expense for treating an appeal from an order of remand as a special case and precluding an appellant from taking, on an appeal from decree, any objection that might have been urged by way of appeal from an order of remand.

The Committee have deleted the word “such” to remove a difficulty it creates (10 Moo. J. A., 340, 413; 12 Moo. I. A., 157).

PART VIII.—REFERENCE, REVIEW AND REVISION.

These provisions are not substantially altered. They are summarised in this Part and the details are in Rules.

PART IX.—CHARTERED HIGH COURTS.

Is not materially altered.

• PART X.—RULES.

• See observations in the former Part of this Report.

PART XI.—MISCELLANEOUS.

The Committee have omitted section 646 as they see no reason specially to differentiate the case of a Registrar, and it is believed that in practice no use is made of the section.

Clause 137.—The Committee have inserted the words “or other person” after the word “officer” in sub-clause (b) in order to give the High Court power to relieve the officers of the Courts of the work of administering affidavits in cases in which it may be necessary to do so. It has been represented to them by the Calcutta High Court that this relief is much required.

Clause 140.—The terms of section 583 of the Code do not justify the practice founded on it, and the Committee have therefore recast the section so as to bring it into closer conformity with that practice.

Clauses 145 and 148 to 150 are new. They are intended to enlarge the discretion of Courts.

B.—Rules.

The Committee think that the division of the Rules into Orders will be found convenient for purposes of citation and reference.

Under clause 35 the Court has full power to apportion costs. The Committee understand that in practice the provision of section 26 is not operative in the mufassil, and that part of the section which related to costs has not therefore been reproduced.

O. I, r. 3 (s. 28).—The Committee realize that the words “in respect of the same matter” in rule 3 have given rise to great difficulty, and they think it advisable to follow the wording of the English rule and to omit them.

O. I, rr. 5 and 7.—The Committee thought that it was desirable to add O. XVI, rr. 5 and 7, of the English Rules.

O. III, r. 2 (s. 37).—The provisions of existing Code which are represented by this clause are in somewhat different terms and are limited to persons holding general powers-of-attorney within certain local limits. The Committee think it unnecessary to preserve these limitations and have made the sub-clause general. It follows that the present clause 37 (b) becomes unnecessary. It is included in sub-clause (a).

The last paragraph of section 37 has been omitted as no longer necessary.

O. III, r. 4 (s. 39).—The Committee are uncertain whether it is necessary to make a reference to the Court of the Judicial Commissioner of Sindb. The point is one for the Government of Bombay.

They also suggest in the alternative that the privilege now enjoyed by all Advocates enrolled in Chartered High Courts shall be extended to those Advocates enrolled in non-Chartered High Courts who are members of the English or Irish bar or of the Faculty of Advocates in Scotland.

O. IV.—Institution of suits.—The greater part of the existing provision on this subject will be found in the Order on Pleadings.

O. VI.—The Committee have added a few rules relating to pleadings based upon the system of pleading introduced by the Judicature Acts in England which is generally admitted to be the best form of pleading in civil suits. In this country outside the Presidency-town the pleadings are seldom artistically drawn. They are neither concise nor precise but contain vague and general statements from which it is difficult to ascertain

definitely the real question in controversy between the parties. The sole object of pleadings is thus frequently defeated, the issue is enlarged, the trial is delayed and much unnecessary expense is incurred by the parties who are also liable to be taken by surprise. They have further provided that the forms in the Schedule shall when applicable be used for all pleadings, and when they are not applicable, forms of the like character shall be used. The rules prescribed by us will not prevent the pleader from exercising his discretion; for the amount of detail must necessarily vary with the nature of each suit. It is however made clear that there must be particularity sufficient to apprise the Court and the other party of the exact nature of the questions to be tried.

The Committee have also given a party who considers that his opponent's pleading does not give him the information to which he is entitled, the right to apply for further particulars so as to enable him to know what case he has to meet at the trial.

They have, however, endeavoured to modify the rigour of the rules by providing in accordance with section 55 of the Indian Evidence Act that the Court may, notwithstanding the absence of any specific denial, require any fact to be proved by the party who relies upon it.

O. IX.—Section 104 originally formed part of section 60 of Act VIII of 1859, and in combination with the rest of that section it was appropriate. As a separate section, however, it is misleading, and it certainly is not now required in view of the provisions for service on a defendant residing out of British India and for proceedings with a suit *ex parte* when a defendant does not appear. Its retention would involve a diversity of procedure

which the Committee think undesirable (see I. L. R., 23 All., 99).

O. IX, r. 13.—The Committee have inserted words to make it clear that a decree can only be set aside in favour of a defendant against whom the decree has been passed *ex-parte*. There is some conflict of judicial authority upon this point, and the Committee think that the matter should be set at rest in this sense.

O. XI. Interrogatories.—The provisions in the Code as to discovery are based on the rules of English procedure in force at the time when it was passed. Since then the English procedure has been amended and is now contained in order 31. This order has in effect been adopted in the rules regulating the procedure on the original side of the High Courts of Calcutta and Bombay and has, it is believed, been found to work satisfactorily in practice.

On the other hand, in Mufassil Courts little use has yet been made of the machinery of discovery, and the Committee therefore think the rules of the Calcutta and Bombay High Courts on their original sides may be safely adopted without risk of disturbing a procedure with which the Mufassil Courts have become familiarized.

This will secure uniformity of practice and also the advantage of the commentary on the rules prescribed by the English decisions.

O. XII.—Admissions.—The Committee think the practice of admissions may with advantage be extended to facts as well as to documents.

The procedure is not compulsory, but its adoption would result in cheapening and expediting litigation, and it is hoped that its use will be encouraged by the Courts.

O. XIV, r. 6 (s. 150).—There does not seem to be any real conflict as to whether an appeal lies, though at first sight it might appear otherwise. It has therefore been considered unnecessary to provide expressly for an appeal.

O. XX, r. 11 (s. 210).—The Committee have added words to sub-rule (1) of this rule in order to override the ruling of the Bombay High Court in the case of *Raghu Govind Paranjpe v. Dipchand* (I. L. R., 4 Bom., 96), as the practice inculcated by that ruling seems to prevail only in the Presidency of Bombay and not in the rest of India.

O. XX, r. 14 (s. 214).—These amendments are based on the rulings contained in the decisions of the High Court of Allahabad at I. L. R., 6 All., 370, 455, and I. L. R., 11 All., 164.

Having regard to the opinion expressed in I. L. R., 24 Mad., at page 463, we have thought it right to make it clear that title vests without an instrument of transfer. To require a transfer now might throw a cloud over numberless title which rest on the assumption sanctioned by long practice that no instrument of transfer was necessary.

O. XX, r. 18 (s. 216).—The Committee have introduced an amendment to give effect to the view that appeals from decrees relating to set-off should lie to the Courts to which appeals in respect of the original claim would lie.

O. XXI, r. 2.—The Committee have omitted certain words from the last paragraph of section 258 of the Code in order to make it clear that the Court cannot recognize a payment or adjustment which has not been certified for any purpose whatsoever. It follows that an uncertified payment or adjustment cannot operate to prolong the period of limitation for applying for execution under the Limitation Act.

O. XXI, r. 3.—The Committee have inserted this rule to provide for cases, which they are told are not uncommon, of an estate being situated within the jurisdiction of two or more Courts. There are decisions on this point, but they are not harmonious, and the Committee think it well to determine the law definitely.

O. XXI, r. 11 (s. 256).—The Committee have omitted the limitation imposed under the existing Code on oral applications for immediate execution. They see no reason why this limitation should be preserved.

O. XXI, r. 11 (e).—The Committee have not given effect to the suggestion that this should be limited to payments and adjustments which the creditor executing the decree is bound by law to recognize, as this would remove a valuable incentive to state truly what payments have been made (see I. L. R. 10 Bom., 288).

O. XXI, r. 20.—The Committee have omitted the words “or his or their representatives.” This will be covered by the general clause.

O. XXI, r. 23 (4) *explanation and illustration (d)*, (s. 246).—This addendum has been introduced in accordance with the views of the Calcutta and Allahabad High Courts as expressed in the cases of *Hury Doyal Guho v. Din Doyal Guho* (I. L. R. 9 Cal. 479) and *Ram Sukh Duss v. Tota Ram* (I. L. R. 14 All., 339).

O. XXI, r. 26. (s. 248).—The Committee have omitted the reference to a decree passed on appeal, for that is ordinarily the decree to be executed. [*Kristo Kinkur Roy v. Rajah Burrodagunt Roy* (14 Moo. I. A. 465) and *Muhammad Sulaiman Khan v. Muhammad Yar Khan* (I. L. R. 11 All. 267.)

O. XXI, r. 32 (s. 260).—The Committee have omitted in this rule all reference to a decree for the recovery of a wife, for there can be no such decree under the law, as a wife cannot be treated as a chattel to be delivered over to the husband. Where any third person prevents the wife from returning to her husband, the latter may obtain an injunction against him which may be enforced in case of disobedience either by the imprisonment of the defendant, or by the attachment of his property, or by both.

O. XXI r. 34.—Section 261 has been recast so as to bring it into conformity with the chronological order of events, and a provision has been added to meet the requirements of the Indian Registration Act.

O. XXI, rr. 44 and 45.—These provisions were inserted in Bill No. II with the approval of the Government of India, and the Committee have therefore reproduced them in the present edition of the Bill.

O. XXI, r. 56.—The purpose of this rule is to put an end to doubts which from time to time have arisen as to the continuance of an attachment by reason of the practice of “striking off proceedings” or “removing proceedings from the file” for which there is no justification in the Code.

O. XXI, r. 57 (s. 278).—Though the execution of mortgage decree is expressly incorporated in the Code, the Committee still think that claims and objections arising out of the execution of such decrees should not be the subject of summary procedure under this and the following rules, but should be determined in the ordinary course.

This does not imply that the procedure under the later rules as to resistance to possession or dispossession does not apply.

O. XXI, r. 76.—In rules 76 and 83 express reference has been made to a resale so as to make it clear that the default mentioned in those rules will attract the consequence indicated in rule 70. In this connection reference may be made to I. L. R., 7 Cal., 337.

O. XXI, r. 85.—The Committee have altered this rule in order to prevent its being obligatory on the Court to forfeit the deposit in every case. The rule as it stands at present has caused hardship in certain circumstances, *vide* the case of *Sambasiva Ayyar v. Vydinala Sami* (I. L. R., 25 Mad., 535).

O. XXI, r. 88 (*s.* 310 A).—Words have been added so as to make it clear that a purchaser acquiring a title before the sale in execution can claim the benefit of the rule. In other respects the Committee consider it advisable to adhere to the wording of the section.

The proposal that the sale should be set aside on payment of the purchase money instead of the amount specified in the proclamation is, in their opinion, fraught with danger: it would be obviously useless unless subsequent protection were given to the property, and such protection might lead to collusion, which would be most prejudicial to the decree-holder.

O. XXI, r. 89.—The Committee have struck out the provision as to irregularity *in attaching the property*, as such irregularity obviously cannot affect the price.

They have introduced the words “rateable distribution of assets” to clear up a doubt which has been the subject of discussion in several cases.

They have altered the language of the proviso in order to meet the doubts which have been raised as to the evidence upon which the Court can Act.

Tasadduk Rasul Khan v. Ahmad Husain (I. L. R., 21 Cal., 66).]

O. XXI, r. 91.—The Committee think it proper to retain the provisions of the Code, which make it necessary for the Court to confirm the sale in each case.

O. XXI, r. 92 (s. 315).—The Committee have added words at the commencement of the clause in substitution of the last paragraph of the section which thus becomes unnecessary.

O. XXI, r. 95 (s. 316).—The Committee have preserved the limitation of three years from the date of the certificate as suggested by the Select Committee in Bill No. II. This clears up a doubt as to the time from which limitation begins to run, which has been discussed on more than one occasion.

O. XXII, r. 1.—The Select Committee struck out two of the four illustrations to section 361 and the Committee think the remaining illustrations may also be deleted as they are too obvious to serve any useful purpose.

O. XXII, r. 3.—The Committee have introduced words in order to conform to the language of the Indian Limitation Act, 1877, as amended.

O. XXII, r. 5 (s. 366).—Though *or* is the word used in the Code of 1882 and the Code of 1877, in the Bill of 1877 the word *and* is used, and it appears to the Committee clear that *and* is required by the context. If *and* is not used, then the contrast with the preceding section is lost.

The explanation can be omitted having regard to the definition of "legal representative" inserted by the Committee.

O. XXIII, r. 3.—The Committee have considered it expedient to alter the language of section 375 so

as to recognize the power of a Court to enquire into and to record a disputed compromise.

O. XXV, r. 1 (3) (s. 380).—The Committee have deleted the last words of this sub-rule, because the nature of the suit excludes the possibility of the property in suit being immoveable.

O. XXIX, r. 2.—The Committee have enlarged the language of the Code so as to allow of service by post on corporations having a registered office, and by this means the rule is brought into line with the provisions of the Indian Companies Act. Companies authorized to sue and be sued in the name of an officer or of a trustee must be very few, if, indeed, any exist, and they do not appear to the Committee to call for special treatment.

O. XXX, r. 1.—The Committee have adopted with the necessary alterations the English procedure in relation to suite against firms. This new procedure has been in force for some time in the Presidency-towns of Calcutta and Bombay and has worked satisfactorily.

It is hoped that its general application will be found useful by the mercantile community, for the rules remove technical obstacles which under the present procedure may seriously impede this class of litigation, as where a partner has died.

O. XXXII, r. 3 (4).—This is based on section 443. The Committee think it necessary to ensure that notice should reach one interested in the minor's welfare, and this rule aims at securing this result. The form of application and of notice in conformity with this sub-rule will be inserted in the schedule of forms.

O. XXXII, r. 9.—The Committee think it expedient that where a guardian insists on his right to be appointed next friend in the place of another

there should be power to require him to become liable or give security for costs in the suit previously incurred.

O. XXXII, r. 15.—The Committee have extended this rule so as to cover the case of a person incapacitated from protecting his interests by reason of his mental weakness or of his being a deaf mute.

O. XXXIII, r. 1 (s. 401).—The Committee have not preserved section 402. In the light of the case-law it is misleading, so far as it suggests that a suit will lie for loss of caste or abusive language, and they can see no sufficient reason for withholding from a pauper a right to sue as such in respect of defamation or assault.

O. XXXIV, r. 1.—The proviso to section 85 of the Transfer of Property Act, 1882, has given rise to certain doubts which the Committee have sought to remove by substituting for it the words now added with a view to making it clear that a person not a party is not bound by a decree [*Ram Nath Rai v. Lachman Ram* (L. R., 2. I. A., 193).]

The explanation has been inserted in order to remove doubts which have arisen from the conflict of authorities on the point.

O. XXXIV, r. 2 (b).—The Committee have inserted the words “if necessary” before “retransfer” as according to mufassil practice a re-transfer is not ordinarily required and they think this practice should not be altered.

O. XXXIV, r. 3.—The Committee have omitted the provision as to the defendant paying money to the plaintiff. They think it better that in every case he should pay it into Court.

O. XXXIV, r. 9.—This rule is new. It is a recognition of existing practice and remedies an

obvious omission in the Transfer of Property Act, 1882.

O. XXXIV, r. 11.—The Committee have inserted this rule in compliance with the suggestion of the Privy Council in *Gupi Narain Khanna v. Bansidhar* (L.R., 32 I. A., 123). This clause was in the Transfer of Property Bill, but was omitted by the Select Committee on that Bill on the ground that it ought to find a place in the Civil Procedure Code.

O. XXXV, r. 3.—The Committee think that the institution of the interpleader suit affords a sufficient reason for the stay of other litigation in reference to the same subject-matter and they have modified section 476 so as to give effect to this view.

O. XXXVII, r. 1.—As Chapter XXXIX of the Code is transferred into rules, the Committee have not reproduced paragraph (c) of section 538 as its appropriate place will be in rules under the Presidency Small Cause Courts Act, 1882.

O. XXXVII, r. 2.—The explanation to section 532 was inserted to negative the effect of the decision in I.L.R., 1 Cal., 130, but its meaning, as it stands, is obscure. The Committee have therefore deleted the explanation, and added words in the body of the rule which will remove the doubts at which the explanation was aimed.

O. XXXVIII, r. 6 (s. 483).—The Committee have omitted the words "property within the jurisdiction of the Court," as they have caused a conflict of decision; and they think, as a matter of policy, there should not be the restriction these words suggest.

O. XXXVIII, r. 13.—This rule represents the views of the Government of India as expressed in the former Bill.

O. XXXIX, r. 6.—Words have been added to section 498 so as to empower the Court to order a sale of securities where that state of the market requires such a course.

O. XL.—Having regard to their standard of efficiency, the Committee see no reason to withhold from Subordinate Judges the power to appoint Receivers. They therefore propose that section 505 of the Code should no longer be retained, for its effect in practice is often to defeat the purpose for which an application is made.

O. XLI.—Section 554 of the Code has been omitted as unnecessary.

O. XLI, r. 5 (s. 545).—The Committee have added words to section 545 in order to make it clear that proceedings under a decree as well as execution can be stayed by an Appellate Court; the recognition of preliminary decrees makes it the more necessary to have an express power to this effect instead of resting on an inherent power [*Balkishen Sahu v. Khugnu* (I.L.R., 31 Cal., 722)]. The Committee have introduced express words authorizing an *ex-parte* stay, as the need for such an order constantly arises in practice.

O. XLI, r. 6 (s. 546).—The Committee have modified this rule in order to make it clear that security may be required though the property has previously been taken in execution [see *Hukum Chand Boid v. Kamalanand Singh* (I.L.R., 33 Cal., 927)].

O. XLI, r. 7.—The Committee have added this clause to meet particularly the case where the litigant does not quarrel with the decree but appeals from an order passed in execution of that decree. (I.L.R., 28 Cal., 734).

O. XLI, r. 23.—After due consideration the Committee have thought it safer not to give legislative sanction to the views enunciated in *Habib Bakhsh v. Baldeo Prasad* (I.L.R., 23 All., 167). The power of reversal and remand is liable to be abused, while the procedure under section 566 is free from this liability and at the same time furnishes an effectual remedy.

The words at the end of the rule have been added to clear up a doubt which is stated by the Select Committee to exist as to whether evidence recorded at the original trial can be used on the trial after remand.

O. XLI, r. 34.—The Committee consider it most important that an Appellate Court should have the fullest power to do complete justice between the parties.

The illustration indicates a type of case for which provision is intended to be made.

O. XLII, r. 1 (l).—The extension of time for the payment of mortgage-money is obviously of much greater moment to the mortgagor than to the mortgagee. Therefore the Committee have provided for an appeal from an order refusing, but not from an order granting, an extension of time.

O. XLIII, r. 1 (s. 592).—Words have been added to avoid the conclusion at which the Madras High Court has recently arrived (I.L.R., 26 Mad., 369).

O. XLV, r. 1.—The words “or the construction of a document, which construction may affect the merits,” have been omitted, as they appear to be sufficiently covered by the power to refer any question of

NOTES ON SCHEDULES.

SCHEDULE IV.

The Committee have amended section 22 of the Limitation Act to supply an omission which has been noticed by the High Courts; namely, the absence of any provision with regard to a devolution of interest *pendente lite* where it takes place otherwise than by reason of death. The section as amended will include not only cases in which a devolution of interest takes place *pendente lite* owing to death but also to other cases in which such devolution occurs.

The Code [s. 312] contemplates the confirmation of a sale of immoveable property immediately on the expiration of the thirty days allowed by article 166 of the Limitation Schedule. But the period allowed for an application to set aside a sale on the ground that the judgment-debtor has no saleable interest therein is sixty days [article 172]. The result is that in some Provinces the confirmation of a sale is delayed for sixty days; whilst, in other Provinces, sales which have been already confirmed are liable to be set aside. The Committee think that in the matter of limitation an application under section 313 should be brought into line with an application under section 311 and they therefore propose to repeal article 172 and to amend article. 166 so as to include applications under section 313.

SPEECH

OF

The Hon'ble Mr. ERLE RICHARDS.

The Hon'ble Mr. Erle Richards :—“ My Lord, I have the honour to present the Report of the Select Committee on the Bill to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature and annexed to it a copy of the Bill in which the amendments suggested by the Committee are shown in italicised type.

“ It will be seen from these papers that the Committee recommend no alterations of a radical kind in the Bill as settled by the Committee which sat at Simla during the past summer. There are a number of amendments of detail suggested which taken together effect a substantial improvement; but the main lines of the Bill have been accepted.

“ The principal feature of novelty in the Bill as introduced is the re-arrangement of the clauses and the relegation of minor provisions to a schedule which can be amended or added to by High Courts subject to the advice of Rule Committees. The proposal has met with general acceptance. Local Governments and High Courts are at one

in thinking that it will effect a valuable improvement in the machinery of our civil procedure, and the Committee agree with them.

“Two amendments have been introduced in that part of the Bill which deals with the rule-making power. The first is the insertion of a proviso that rules before being made are to be published, with the result that under section 23 of the General Clauses Act there will be an opportunity for the public to criticise any proposals before they become law. This suggestion was put forward by the British Indian Association and the Committee think that it is one of value. The second change is in the composition of the Rule Committees. It has been pointed out that the Rule Committees ought to have among their members some gentlemen in touch with mufassal practice. The Bill as introduced provided that one of the Judges on the Committee should have had mufassal experience, but the Committee think that this in itself is hardly sufficient. They suggest therefore that there should be a Subordinate Judge on each Rule Committee and that there should be power also to appoint a Vakil or pleader practising in the mufassal. They further recommend that the Bill should not come into operation at once on passing but that there should be an interval allowed in order that

the public and profession may make themselves acquainted with the new arrangement.

“The amendments of the other of provisions the Bill do not call for any special mention on the present occasion. Many of them are in the nature of corrections or improvements of drafting. Since the Bill was introduced in this Council it has been once more examined and revised by some of our Colleagues and the criticisms on it have been carefully considered and digested in the Legislative Department. In that way the work of the Committee has been much lessened. This is the fourth Committee which has now deliberated on civil procedure, and it is safe to say that there is no conceivable point which has not been fully discussed during those deliberations. I would point out, my Lord, that the present Committee, like the Simla Committee are unanimous in their approval of this Bill.”

I.

Statement showing the disposal of the provisions of the Old Code of Civil Procedure, 1882.

Section of Act XIV of 1882.	Clause.	Order and Rule.
1 ...	1.	
2		
“ Chapter ” ...	Omitted.	
“ district ” ...	} 2 (4)	
“ Dist. Court ” ...		
“ pleader ” ...	2 (15)	
“ Government pleader ” ...	2 (7)	
“ Collector ” ...	Omitted.	
“ decree ” ...	2 (2)	
“ order ” ...	2 (14)	
“ judgment ” ...	2 (9)	
“ judge ” ...	2 (8)	
“ judgment- debtor ” ...	2 (10)	
“ decree-holder ”	2 (3)	
“ written ” ...	Omitted.	
“ signed ” ...	2 (20)	
“ foreign Court ”	2 (5)	
“ foreign judgment ”	2 (6)	
“ public officer ”	2 (17)	
“ Government ”	Omitted.	
3 ...	154, 156, 157, 158	.

Section of Act XIV of 1882.		Clause.	Order and Rule.	
4	...	4		
4A	...	5		
5	...	7		
6, paras.				
(c) and (d)		Omitted.		
6, last para.	...	6		
7	...	<i>Cf.</i> 4		
8	...	<i>Cf.</i> 8		
9	...	Omitted.		
10	...	"		
11	...	9		
12	...	10		
13	...	11		
Expln. VI	...	14		
14	...	13		
15	...	15		
16	...	16		
16A	...	18		
17	...	20		
18	...	19		
19	...	17		
20	...	Omitted.		
21	...	"		
22	...	22, 23, (1)		
23	...	22, 23, (2)		
24	...	1 and 322 (3)		
25	...	24		
26	I	1, 4 (a)
27	"	10 (1)
28	"	3, 4 (b)

Section of Act XIV of 1882.		Clause.	Order and Rule.	
30	I	8 (1)
31	"	9
32	"	8 (2), 10 (2), (3), (5), 11 10 (4)
33	"	13
34	"	12
35	III	1
36	"	2
37	"	3
38	"	4
39	"	5
40	"	6
41	II	1
42	"	2
43	"	4, 5
44	"	3, 6
45	"	6, 7
46	...	} ...	Cf. II	1
47	...		IV	1
48	...	26		
49	...	Cf. 137		
50	VII 1, 2, 4, 5, 6.	
51	VI 15 (1)	14
52	"	15
53	VII	11-17
54	„ 11 Cf. o. VI,	18
55	"	12
56	"	13
57	"	10
58	"	9

Section of Act XIV of 1882.	Clause.	Order and Rule.	
58, last para.	IV	2
59	VII	14
60	"	15
61	"	16
62	"	17
63	"	18
64 ...	27	V	1
65	"	2
66	"	3
67	"	4
68	"	5
69	"	6
70	"	7
71	"	8
72	"	9
73	"	10
74	"	11
75	"	12
76	"	13
77	"	14
78	"	15
79	"	16
80	"	17
81	"	18
82	"	19, 20 (1)
83	"	20 (2)
84	"	20 (3)
85 ...	28	"	21, 23
86	"	22
87	"	} 24, 29
88	"	

Section of Act XIV of 1882		Clause.	Order and Rule.	
89	V	25
90	"	26
91	"	30 (1), (2)
92	"	30 (3)
93	XLVIII	1
94	...	142	"	2
95	...	143	"	
96	IX	1
97	IX	2
98	"	3
99	"	4
99A	"	5
100	"	6
101	"	7
102	"	8
103	"	9
104	...	Omitted.		
105	IX	10
106	"	11
107	"	12
108	"	13
109	"	14
110	VIII	1
111	"	6
112	"	9
113	"	10
114	Cf. VI	2
115	"	14, 15
116	•	...	Cf. " 16, 17	
117	X •	1

Section of Act XIV of 1882.	Clause.	Order and Rule.
118	...	X 2
119	...	" 3
120	...	" 4
121	...	XI 1
122	...	<i>Cf.</i> XLVIII 2
123	...	XI 3
124	...	" 5
125	...	" 6
126	...	" 8
127	...	" 11
128	...	XII 2
129	...	XI 12, 13
130	...	" 14
131	...	" 15
132	...	" 17
133	...	" 18 (1)
134	...	" 18 (2)
135	...	" 20
136	...	" 21
137	...	XIII 10
138	...	" 1 (1)
139	...	" 2
140	...	" 1 (2)
	...	3
141	...	" 4
141A	...	" 5
142	...	" 6
142A	...	" 7
143	...	" 8
144	...	" 9
145	...	" 11

Section of Act XIV of 1882.		Clause.	Order and Rule.	
146	XIV	1, 2
147	"	3
148	"	4
149	"	5
150	"	6
151	"	7
152	XV	1
153	"	2
154	"	3
155	"	4
156	XVII	1.
157	"	2
158	"	3
159	XVI	1
160	"	2
161	"	3
162	"	4
163	"	5
164	"	6
165	"	7
166	"	8
167	"	9
168	"	10
169	"	11
170	"	12
171	"	14
172	"	15
173	"	16
174	} "	10 to
175	•	...		" . 13, 17, 18
176		" 19

Section of Act XIV of 1882.		Clause.	Order and Rule.	
177	XVI	20
178	"	21
179	XVIII	1,
				2 (1)
180	"	2 (2),
				(3), 3.
181	"	4
182	"	5
183	"	6
184	"	8
185	"	9
185 A, first and second paras.		138		
185 A, third para.	"	7
186	"	10
187	"	11
188	"	12
189	"	13
190	"	14
191	"	15
192	"	16
193	"	17
194	XIX	1
195	"	2
196	"	3
197	...	139		
198	...	83	XX	1
199	"	2
200	...	} Cf. 137	"	
201	...		"	
202	...		"	3

Section of Act XIV of 1882.	Clause.	Order and Rule.	
203	XX	4
204	"	5
205	"	7
206, first and 2nd paras.	...	"	6
206, third para ...	152	
207	XX	9
208	"	10
209 ...	34	
210	XX	11
211 ...	} 2 (12)	"	12
212 ...		"	13
213 ...		"	14
214 ...		"	15
215 ...		"	16
215A	"	19
216	"	20
217	"	
218 ...	} Cf. Cl. 35		
219 ...			
220 ...		"	6 (3)
221 ...			
222 ...	} Cf. Cl. 38	
223, first para	
223 second and third paras.	" 39	
223, fourth para...	" 41	
223, fifth para.	XXI	4
223, sixth para.	"	- 5
224 •	"	6
225	"	7

Section of Act XIV of 1882.	Clause.	Order and Rule.	
226	XXI	8
227	"	9
228 ...	42		
229 ...	43		
229 A ...	45		
229 B ...	44		
230, first para.	"	10
230, second para.	"	21
230, third and fourth paras. ...	48		
231	"	15
232	"	16
233 ...	49		
234 ...	50		
235	"	11 (2)
236	"	12
237	"	13
238	"	14
239	"	26 (1) (2)
240	"	26 (3)
241	"	27
242	"	28
243	"	29
244 ...	47		
245	"	17
245 A ...	56		
245 B	"	37
246	"	18
247	"	19
248	"	22
249	"	23

Section of Act XIV of 1882.		Clause.	Order and Rule.
250	XXI 24 (1)
251	" 24 (2)
			(3), 25 (1),
252	...	52	...
253	...	<i>Cf.</i> 115	
254	" 30
255	" 42
256	" 11 (1)
257	" 1
257A	...	Omitted.	
258	" 2
259	" 31
260	" 32
261	" 34 (1)
			(to 4)
262	" 34 (5)
263	" 35
264	" 36
265	...	54	
266	...	60	
267	" 41
268	" 46
269	" 43
270	" 50
271	...	62	
272	" 52
273	" 53
274	" 54
275	" 55
276	...	64	
277	" 56

Section of Act XIV of 1882.		Clause.	Order and Rule.	
278	XXI	58
279	"	59
280	"	60
281	"	61
282	"	62
283	"	63
284	"	64
285	...	63		
286	"	65
287	"	66, 70
288	...	Omitted.		
289	"	67
290	"	68
291	"	69
292	"	73
293	"	71
294	"	72
295	...	73		
296	"	76
297	"	77
298	"	78
299	"	79 (1)
300	"	79 (2)
301	"	79 (3)
302	"	80
303	"	81
304	"	82
305	"	83
306	"	84
307	"	85
308	"	86

Section of Act XIV of 1882.		Clause.	Order and Rule.	
309	XXI	87
310	"	88
310A	"	89
311	"	90
312	"	92
313	"	91
314	"	92
315	"	93
316	...	65	"	94
317	...	66		
318	"	95
319	"	96
320	...	68, 70 and 71 The Third Schedule		
321	...			
322	...			
322A	...			
322B	...			
322C	...			
322D	...			
323	...			
324	...			
324A	...			
325	...			
325A	...			
325B	...			
325C	...			
326	...	72		
327	...	67		
328	"	97
329	"	98
330	"	98

Section of Act XIV of 1882.	Clause.	Order and Rule.
331	...	XXI 99
332	...	" 100, 101
333	...	XXI 103
334	...	" 102
335	...	" 97, 98
		97,99-103
336	...	55
337	...	XXI 38
337A	...	" 40
338	...	57
339	...	" 39 (1) to (4) 39 (5)
340	...	
341	...	} 58
342	...	
343	...	XXI 29
344-360A	...	Repealed by the Provin- cial Insol- vency Act, 1907.
361	...	XXII 1
362	...	" 2
363	...	" 3 (1)
365	...	" 3 (1)
366	...	" 3 (2)
367	...	" 5
368	...	" 4
369	...	" 7
370	...	" 8
371	...	" 9 (1) (2)
372	...	" 10

Section of Act XIV of 1882.	Clause.	Order and Rule.
		XXII 9 (3)
		1
		2
		3
		4
		XXIV 1
		2
		3
		4
		XXV 1 (1),
		(3)
		2
		1 (2)
		XXVI 1
		2
		3
76		4
		5
		6
		7
		8
78		9
		10
		11
		12
		13
		14
		16
		17

Section of Act XIV of 1882.		Clause.	Order and Rule.	
400	XXVI	18
401	XXXIII	1
402	...	Omitted.		
403	"	2
404	"	3
405	"	5
406	"	4
407	"	5
408	"	6
409	"	7
410	"	8
411	"	10
412	"	11
413	"	15
414	"	9
415	"	16
416	...	79	XXVII	1
417	"	2
418	"	3
419	"	4
420	"	5
421	"	6
422	" V	27
423	XXVII	7
424	...	80		
425	...	81		
426	...)		
427	...)	"	8
428	...	81		
429	...	82		
430	...	83		

Section of Act XIV of 1882.		Clause.	Order and Rule.
431	...	84	
432	...	85	
433	...	86	
434	...	87	
435	XXIX 1
436	2, 3
437	XXXI 1
438	" 2
439	" 3
440	XXXII 1, 4 (2)
441	" { 5 (1)
442	" { 2
443	" 3 (1),
			4 (2)
444	" 5 (2)
445	" 4 (1)
446	" 9
447	" 8
448	" 10 (1)
449	" 10 (2)
450	" 12 (1)
451	" { 12 (2)
			" { (3)
452	" 12 (4)
453	" 12 (5)
454	" 13
455	" 14
456	" { 3(2), (3)
			" { 4 (4)
457	" 4 (1)
458	" 11 (1)

Section of Act XIV of 1882.	Clause.	Order and Rule.
459	...	XXXII 11 (2)
460	Omitted.	
461	...	" 6
462	...	" 7
463	...	" 15
464	...	" 16
465	...	XXVIII 1
466	...	" 2
467	...	" 3
468	...	" V 28, 29
470	88	
471	...	XXXV 1
472	...	" 2
473	...	" 4
474	...	" 5
475	...	" 6
476	...	" 8
477	}	XXXVIII 1
478		" 2
479	...	" 3
480	...	" 4
481	...	" 5
482	...	" 6
483	}	" 7
484		" 8
485	...	" 9
486	...	" 10
487	...	" 11
488	...	
489	...	

Section of Act XIV of 1882.	Clause.	Order and Rule.
490	...	XXXVIII 12
491	95	
492	...	XXXIX 1
493	...	" 2
494	...	" 3
495	...	" 5
496	...	" 4
497	95	
498	...	" 6
499	...	" 7
500	...	" 8
501	...	" 9
502	...	" 10
503	...	XL 1 to 3
504	...	" 5
505	Omitted.	
506	} The Second Schedule.	
507		
508		
509		
510		
511		
512		
513		
514		
515		
516		
517		
518		
519		
520		

Section of Act XIV of 1882.		Clause.	Order and Rule.	
521	...	} The Second Schedule.		
522	...			
523	...			
524	...			
525	...			
526	...			
527	...	90	XXXVI	1
528	"	2
529	"	3
530	"	4
531	"	5
532	XXXVII	2
533	"	3
534	"	4
535	"	5
536	"	6
537	"	7
538	"	1
539	...	92 and 93	"	
540	...	96		
541	XLI	1
542	"	2
543	"	3
544	"	4
545	"	5
546	"	6
547	"	7
548	"	9
549	"	10
550	"	13
551	"	11

Section of Act XIV of 1882.		Clause.	Order and Rule.	
552	XLI	12
553	,	14
554	"	15
555	XII	16
556	"	17
557	"	18
558	"	19
559	"	20
560	"	21
561	"	22
562	"	23
564	...	Omitted	"	
565	...			24
566				25
567				26
568				27
569				28
570				29
571				30
572				
573		Cf. 135		
574				31
575	...	30		
576		34
577		32
578	...	99		
579		35
580		36
581		37
582	• ...	107 (2)	XXII	11
582A	...	146		

Section of Act XIV of 1882.		Clause.	Order and Rule.	
583	...	144 (1)		
584	...	100		
585	...	101		
586	...	102		
587	...	108		
588	...	104	XLIII	1
589	...	106		
590	...	108	"	2
591	...	105		
592	XLIV	1
593	"	2
594	XLIV	1
595	...	109		
596	...	110		
597	...	111		
598	XLIV	2
600	"	3
601	"	6
602	"	7
603	"	8
604	"	9
605	"	10
606	"	11
607	"	12
608	"	13
609	"	14
610	"	15
611	"	16
612	...	} Omitted.		
613	...			
615	...			

Section of Act XIV of 1882.		Clause.	Order and Rule.	
616	...	112		
617	...	113	XLVI	1
618	"	2
619	"	3
620	"	4
621	"	5
622	...	115		
623	...	114	XLVII	1
624	"	2
625	"	3
626	"	4
627	"	5
628	"	6
629	"	7
630	"	7-9
631	...	116		
632	...	117		
633	...	122		
634	...	118		
635	...	119		
636	XLIX	1
637	...	128 (2) (i)		
638	...	120 (1)	"	3
639	...	120 (2)		
640	...	132		
641	...	133		
642	...	135		
643	...	Omitted.		
644	XLVIII	4
645	...	137		
645A	...	140		

Section of Act XIV of 1882.		Clause.	Order and Rule.	
646	...	Omitted		
646A	XLVI	6
646B	"	7
647	...	141		
648	...	136		
649,	...	36, 37		
650	...	Omitted.		
650A	...	29		
652	...	122, 129,		
		130 and 131		
653	...	59		

II.

**Statement showing the Clauses of the Code of 1908
corresponding to the Sections of the
Code of 1882.**

No. of the Clauses, of the Code of 1908.	No. of the Corres- ponding Sections of the Code of 1882.	No. of the Clauses, of the Code of 1908.	No. of the Corres- ponding Sections of the Code of 1882.
	<i>Preliminary.</i>	17	19
1	1	18 (1)	16 A
2	2	1	18
Expl. 11	New.	20	17.
" 12	211 Explanation.	21	16-A (2)
" 13	New.	22	22
3	2	23	23, 24
4	4	24	25
5	4A	25	New.
6	6 last para.	26	48
7	5	27	64
8	8	28	8
		29	650A
	PART I.	30	New.
	<i>Suits in General.</i>	31	"
9	11	32	"
10	12	33	198
11	13	34	209
12	New.	35 (1)	(Sec. 5, Judicature Act) 1890.
13	14	" (2)	220
14	13 Expl. 6.	" (3)	222
15	15		
16	16		

THE CODE OF CIVIL PROCEDURE.

No. of the Clauses, of the Code of 1908.	No. of the Corres- ponding Sections of the Code of 1882.	No. of the Clauses, of the Code of 1908.	No. of the Corres- ponding Sections of the Code of 1882.
	PART II.	62	271
	<i>Execution.</i>	63	285
	New.	64	276
36	649 Explanation.	65	New. c.f. 316
37	223 1st para.	66	317
38	223 2nd & 3rd ps.	67	327
39	New.	68	320
40	223 4th para.	69	New.
41	228	70 (1)	320 2nd & 3rd ps.
42	229	„ (2)	320 4th para.
43	229B	71	320 5th para.
44	229A	72	326
45	New.	73	295
46	244	74	330
47	230 3rd & 4th ps.		PART III.
48	233		<i>Incidental Pro- ceedings.</i>
49	234		New.
50 (1)	New.	75	386
51	252	76	New.
52	New.	77	391
53	265	78	
54	336		PART IV.
55	245A		<i>Suits in Particular cases.</i>
56	388		416
57	342 & 341		424
58	653	79	425 & 428
59	266	80	
60	New.	81	
61			

of
of
of

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THE AMENDED
LETTERS PATENT
FOR THE
**HIGH COURT OF JUDICATURE FOR
THE PRESIDENCY OF MADRAS.**

Bearing date the Twenty-eight day of December, in the Twenty-ninth year of the Reign of *Victoria*, in the year of Our Lord, one Thousand Eight Hundred and Sixty-five.

[**Recitals of Act 24 and 25 Vict., cap. 104, SS. 1, 2, 3 and 8.**—*Victoria*, by the Grace of God, of the United Kingdom of *Great Britain and Ireland*, Queen, Defender of the faith. To all to whom these Presents shall come, Greeting: Whereas by an Act of Parliament passed in the Twenty-fourth and Twenty-fifth years of Our Reign, entitled “An Act for establishing High Courts of Judicature in *India*.” It was, amongst other things, enacted that it should be lawful for Her Majesty, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature at *Madras*, for the Presidency of *Madras* aforesaid, and that such High Court should consist of a Chief Justice and as many Judges, not exceeding Fifteen, as Her Majesty might, from time to time, think fit to appoint, who should be selected from among persons qualified as in the said Act is declared: Provided always that the persons who at the time of the establishment of such High Court were Judges of the Supreme Court of Judicature, and permanent Judges of the Court of Sudder De-

wanny Adawlut or Sudder Adawlut of the same Presidency, should be and become Judges of such High Court, without further appointment for that purpose, and the Chief Justice of such Supreme Court should become the Chief Justice of such High Court, and that upon the establishment of such High Court as aforesaid, the Supreme Court and the Court of Sudder Dewanny Adawlut and Faujidarry Adawlut at *Madras*, in the said Presidency, should be abolished :

[**And S. 9.**].—And that the High Court of Judicature so to be established should have and exercise all such civil, criminal, admiralty, and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for, and in relation to, the administration of justice in the said Presidency as Her Majesty might, by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original Civil and Criminal jurisdiction beyond the limits of the Presidency Town, as might be prescribed thereby ; and, save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court so to be established should have and exercise all jurisdiction, and every power and authority whatsoever, in any manner vested in any of the Courts in the same Presidency abolished under the said Act at the time of the abolition of such last-mentioned Courts :

[**Charter granted 26th June 1862.**]--And whereas We did, upon full consideration of the premises, think fit to erect and establish, and by Our Letters Patent under the Great Seal of the United Kingdom of *Great Britain and Ireland* bearing date at *Westminster*, the Twenty-sixth day of *June*, in the Twenty-fifth Year of Our Reign, in the Year of Our Lord, One thousand eight hundred and sixty-two, did accordingly, for Us, Our heirs and successors, erect and establish at *Madras*, for the Presidency of *Madras* aforesaid, a High Court of Judicature, which should be called the High Court of Judicature at *Madras*, and did thereby constitute the said Court to be a Court of Record; and whereas we did thereby appoint and ordain, that the said High Court of Judicature at *Madras* should, until further or other provision should be made by Us, or Our heirs and successors in that behalf, in accordance with the recited Act, consist of a Chief Justice and Five Judges, and did thereby constitute and appoint certain persons, being respectively qualified as in the said Act is declared, to be Judges of the said High Court:

[**24 and 25 Vict., C. 104, S. 17.**]—And whereas by the said recited Act it is declared lawful for Her Majesty, at any time within Three Years after the establishment of the said High Court, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty might think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty might think fit, and as might have been granted or made by such first Letters Patent:

[28 Vict., C. 15, S. 1.]—And whereas by the Act of the Twenty-eighth year of Our Reign, chapter fifteen, entitled “An Act to extend the Term for granting fresh Letters Patent for the High Courts in *India*, and to make further Provision respecting the territorial jurisdiction of the said Courts,” the time for issuing fresh Letters Patent has been extended to the First of *January*, One thousand eight hundred and sixty-six :

[And the expediency of fresh Letters Patent.]

—And whereas, in order to make further provision respecting the constitution of the said High Court, and the administration of Justice thereby, it is expedient that the said Letters Patent, dated the Twenty-sixth of *June*, One thousand eight hundred and sixty-two, should be revoked, and that some of the powers and provisions thereby granted and made should be granted and made with amendments and additional powers and provisions by fresh Letters Patent :

1. [Revocation of Letters Patent of 1862.]—Now know ye that We, upon full consideration of the premises and of Our especial grace, certain knowledge and mere motion, have thought fit to revoke, and do by these presents (from and after the date of the publication thereof, as herein-after provided, and subject to the provisions thereof) revoke Our said Letters Patent of the Twenty-sixth of *June*, One thousand eight hundred and sixty-two, except so far as the Letters Patent of the Forty-first Year of His Majesty King *George* the Third, dated the Twenty-sixth of *December*, One thousand eight hundred, establishing a Supreme Court of Judicature at *Madras*, were revoked or determined thereby.

2. [High Court at *Madras* to be continued.]
—And We do by these presents grant, direct and ordain that, notwithstanding the revocation of the said Letters Patent of the Twenty-sixth of *June*, One thousand eight hundred and sixty-two, the High Court of Judicature called the High Court of Judicature at *Madras*, shall be and continue, as from the time of the original erection and establishment thereof, the High Court of Judicature at *Madras* for the Presidency of *Madras* aforesaid ; and that the said Court shall be and continue a Court of Record, and that all proceedings commenced in the said High Court prior to the date of the publication of these Letters Patent shall be continued and depend in the said High Court as if they had commenced in the said High Court after the date of such publication, and that all rules and orders in force in the said High Court immediately before the date of the publication of these Letters Patent shall continue in force except so far as the same are altered hereby, until the same are altered by competent authority.

3. [Judges of the said High Court to be continued.]—And We do hereby appoint and ordain that the person and persons who shall immediately before the date of the publication of these Letters Patent be the Chief Justice and Judges, or Acting Chief Justice or Judges, if any, of the said High Court of Judicature at *Madras*, shall continue to be the Chief Justice and Judges, or Acting Chief Justice or Judges, of the said High Court, until further or other provision shall be made by Us or Our heirs and successors in that behalf, in accordance with the said recited Act

for establishing High Courts of Judicature in *India*.

4. [Clerks, &c., of the said High Court to be continued.]—And We do hereby appoint and ordain that every clerk and ministerial officer of the said High Court of Judicature at *Madras*, appointed by virtue of the said Letters Patent of the Twenty-sixth *June*, One thousand eight-hundred and sixty-two, shall continue to hold and enjoy his office and employment, with the salary thereunto annexed until he be removed from such office and employment; and he shall be subject to the like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.

5. [Declaration to be made by Judges.]—And We do hereby ordain that the Chief Justice and every Judge who shall be from time to time appointed to the said High Court of Judicature at *Madras*, previously to entering upon the execution of the duties of his office, shall make and subscribe the following declaration before such authority or person as the Governor in Council may commission to receive it:—

“I. A. B., appointed Chief Justice [or a Judge] of the High Court of Judicature at *Madras*, do solemnly declare that I will faithfully perform the duties of my office to the best of my ability, knowledge and judgment.”

6. [Seal.]—And We do hereby grant, ordain, and appoint that the said High Court of Judicature at *Madras* shall have and use, as occasion

may require, a seal bearing a device and impression of our Royal Arms, with an exergue or label surrounding, the same, with this inscription, "The seal of the High Court at *Madras*." And We do further grant, ordain, and appoint that the said seal shall be delivered to and kept in the custody of, the Chief Justice, and in case of the vacancy of the office of Chief Justice or during any absence of the Chief Justice, the same shall be delivered over and kept in the custody of the person appointed to act as Chief Justice, under the provisions of section 7 of the said, recited Act; and We do further grant, ordain and appoint that, whensoever it shall happen that the office of Chief Justice or of the Judge to whom the custody of the said seal be committed shall be vacant, the said High Court shall be and is hereby authorized and empowered to demand, seize, and take the said seal from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

7. [Writs, &c., to issue in name of the Crown, and under seal.]—And We do hereby further grant, ordain, and appoint that all writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded by the said High Court of Judicature at *Madras*, shall run and be in the name and style of Us, or of Our heirs and successors, and shall be sealed with the seal of the said High Court.

8. [Appointment of officers.]—And We do hereby authorize and empower the Chief Justice

of the said High Court of Judicature at *Madras* from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor in Council, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of Justice, and the due execution of all the powers and authorities granted and committed to the said High Court by these Our Letters Patent. And We do hereby ordain that every such appointment shall be forthwith submitted to the approval of the Governor in Council, and shall be either confirmed or disallowed by the Governor in Council. And it is Our further will and pleasure, and We do hereby, for Us, Our heirs and successors, give, grant, direct, and appoint that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time, appoint for each office and place respectively and as the Governor in Council, subject to the control of the Governor-General in Council, shall approve of : Provided always, and it is Our will and pleasure that all and every the officers and clerks to be appointed as aforesaid shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices ; but this proviso shall not interfere with or prejudice the right of any other officer or clerk to avail himself of leave of absence under any rules prescribed by the Governor in Council, and to absent himself from the said limits during the term of such leave, in accordance with the said rules.

Admission of Advocates, Vakeels and Attorneys.

9. [Powers of High Court in admitting Advocates, Vakeels, and Attorneys].—And We do hereby authorize and empower the said High Court of Judicature at *Madras* to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys, as to the said High Court, shall seem meet; and such Advocates, Vakeels, and Attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions.

10. [In making rules for the qualifications, &c., of Advocates, Vakeels, and Attorneys].—And We do hereby ordain that the said High Court of Judicature at *Madras* shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakeels and Attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice on reasonable cause, the said Advocates, Vakeels, or Attorneys-at-law, and no person whatsoever but such Advocates, Vakeels, or Attorneys shall be allowed to act or to plead for, or on behalf of, any suitor in the said High Court, except, that any suitor shall be allowed to appear, plead, or act on his own behalf, or on behalf of a co-sutor.

Civil Jurisdiction of the High Court.

11. [Local limits of the ordinary original jurisdiction of the High Court].—And We do

hereby ordain that the said High Court of Judicature at *Madras*, shall have and exercise ordinary original civil jurisdiction within such local limits as may from time to time be declared and prescribed by any law made by the Governor in Council, and, until some local limits shall be so declared and prescribed, within the limits of the local jurisdiction of the said High Court of *Madras* at the date of the publication of these presents, and the ordinary original Civil jurisdiction of the said High Court shall not extend beyond the limits for the time being declared and prescribed as the local limits of such jurisdiction.

12. [Original jurisdiction as to suits.]—And We do further ordain that the said High Court of Judicature at *Madras*, in the exercise of its ordinary original Civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property, such land or property shall be situated or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at *Madras*, in which the debt or damage, or value of the property sued for, does not exceed one hundred rupees.

13. [Extraordinary original Civil jurisdiction.]—And We do further ordain that the said High Court of Judicature at *Madras* shall have power to remove, and to try and determine, as a Court of extraordinary original jurisdiction, any suit being or falling within the jurisdiction of any Court, whether within or without the Presidency of *Madras*, subject to its superintendence, when the said High Court shall think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.

14. [Joinder of several causes of action.]—And We do further ordain that where plaintiff has several causes of action against defendant, such causes of action not being for land or other immovable property, and the said High Court shall have original jurisdiction in respect of one of such causes of action, it shall be lawful for the said High Court to call on the defendant to show cause why the several causes of action should not be joined together in one suit, and to make such order of trial of the same as to the said High Court shall seem fit.

15. [Appeal from the Courts of original jurisdiction to the High Court in its Appellate jurisdiction.]—And We do further ordain that an appeal shall lie to the said High Court of Judicature at *Madras* from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any Division Court, pursuant to section 13 of the said recited Act ;

and that an appeal shall also lie to the said High Court from the judgment, not being a sentence or order as aforesaid, of two or more Judges of the said High Court, or of such Division Court, whenever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court at the time being; but that the right of appeal from other judgments of Judges of the said High Court, or of such Division Court, shall be to Us, Our heirs or successors, in Our or their Privy Council, as hereinafter provided.

16. [Appeal from Courts in the provinces.]—And We do further ordain that the said High Court of Judicature at *Madras*, shall be a Court of appeal from the Civil Courts of the Presidency of *Madras*, and from all other Courts, subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.

17. [Jurisdiction as to infants and lunatics.]—And We do further ordain that the said High Court of Judicature at *Madras*, shall have the like power and authority with respect to the persons and estates of infants, idiots, and lunatics within the Presidency of *Madras*, as that which was vested in the said High Court immediately before the publication of these presents.

18. [Provision with respect to the Insolvent Court.]—And We do further ordain that the Court for relief of Insolvent Debtors at *Madras*, shall be held before one of the Judges of the said High Court of Judicature at *Madras*, and

the said High Court, and any such Judge thereof, shall have and exercise, within the Presidency of *Madras*, such powers and authorities with respect to original and appellate jurisdiction and otherwise as are constituted by the laws relating to insolvent debtors in *India*.

Law to be administered by the High Court.

19. [By the High Court in the exercise of ordinary original Civil jurisdiction.]—And We do further ordain that, with respect to the law or equity to be applied to each case coming before the said High Court of Judicature at *Madras*, in the exercise of its ordinary original civil jurisdiction, such law or equity shall be the law or equity which would have been applied by the said High Court to such case if these Letters Patent had not issued.

20. [In the exercise of extraordinary original Civil jurisdiction.]—And We do further ordain that, with respect to the law or equity and rule of good conscience to be applied to each case coming before the said High Court of Judicature at *Madras*, in the exercise of its extraordinary original civil jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which would have been applied to such case by any local Court having jurisdiction therein.

21. [By the High Court in the exercise of Appellate jurisdiction.]—And We do further ordain that, with respect to the law or equity and rule of good conscience, to be applied by the said High Court of Judicature at *Madras*, to each case

coming before it in the exercise of its appellate jurisdiction, such law or equity and rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

Criminal Jurisdiction.

22. [Ordinary original jurisdiction of the High Court.]—And We do further ordain that the said High Court of Judicature at *Madras*, shall have ordinary original Criminal jurisdiction, within the local limits of its ordinary original Civil jurisdiction, and also in respect of all such persons, beyond such limits, over whom the said High Court of Judicature at *Madras* shall have Criminal jurisdiction at the date of the publication of these presents.

23. [Jurisdiction as to persons.]—And We do further ordain that the said High Court of Judicature at *Madras*, in the exercise of its ordinary original Criminal jurisdiction shall be empowered to try all persons brought before it in due course of law.

24. [Extraordinary original Criminal jurisdiction.]—And We do further ordain that the said High Court of Judicature at *Madras* shall have extraordinary original Criminal jurisdiction over all persons residing in places within the jurisdiction of any Court now subject to the superintendence of the said High Court, and shall have authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General, or by any

Magistrate or other officer specially empowered by the Government in that behalf.

25. [No appeal from High Court exercising original jurisdiction. Court may reserve points of law.]—And We do further ordain that there shall be no appeal to the said High Court of Judicature at *Madras* from any sentence or order passed or made in any criminal trial before the Courts of original Criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the said High Court.

26. [High Court to review on certificate of the Advocate General.]—And We do further ordain that, on such point or points of law being so reserved as aforesaid, or on its being certified by the said Advocate-General that, in his judgment, there is an error in the decision of a point or points of law decided by the Court of original Criminal jurisdiction, or that a point or points of law which has or have been decided by the said Court should be further considered, the said High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment and sentence as to the said High Court shall seem right.

27. [Appeals from Criminal Courts in the Provinces.]—And We do further ordain that the said High Court of Judicature at *Madras* shall be

a Court of appeal from the Criminal Courts of the Presidency of *Madras*, and from all other Courts, subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any law now in force.

28. [Hearing of referred cases and revision of Criminal trials.]—And We do further ordain that the said High Court of Judicature at Madras shall be a Court of reference and revision from the Criminal Courts subject to its appellate jurisdiction, and shall have power to hear and determine all such cases referred to it by the Session Judges, or by any other Officers now authorized to refer cases to the said High Court, and to revise all such cases tried by any officer or Court possessing Criminal jurisdiction, as are now subject to reference or to revision by the said High Court.

29. [High Court may direct the transfer of a case from one Court to another.]—And We do further ordain that the said High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it, though such case belongs, in ordinary course, to the jurisdiction of some other officer or Court.

Criminal Law.

30. [Offenders to be punished under Indian Penal Code.]—And We do further ordain that all persons brought for trial before the said High

Court of Judicature at *Madras* either in the exercise of its original jurisdiction, or in the exercise of its jurisdiction as a Court of appeal, reference, or revision, charged with any offence for which provision is made by Act No. XLV of 1860, called the "Indian Penal Code," or by any Act amending or excluding the said Act which may have been passed prior to the publication of these presents, shall be liable to punishment under the said Act or Acts, and not otherwise.

Exercise of jurisdiction elsewhere than at the ordinary place of sitting of the High Court.

31. [Judges may be authorised to sit in any places by way of circuit or special commission.]

—And We do further ordain that whenever it shall appear to the Governor in Council convenient that the jurisdiction and power by these Our Letters Patent or by the recited Act, vested in the said High Court of Judicature at *Madras* should be exercised in any place within the jurisdiction of any Court now subject to the superintendence of the said High Court other than the usual place of sitting of the said High Court, or at several such places by way of circuit, the proceedings in cases before the said High Court at such place or places shall be regulated by any law relating thereto, which has been or may be made by competent legislative authority for *India*.

Admiralty and Vice-Admiralty Jurisdiction.

32. [Civil.]—And We do further ordain that the said High Court of Judicature at *Madras* shall have and exercise all such Civil and Maritime jurisdiction as may now be exercised by the said High Court as a Court of Admiralty or of

Vice-Admiralty, and also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in *India* as may now be exercised by the said High Court.

33. [Criminal].—And We do further ordain that the said High Court of Judicature at *Madras* shall have and exercise all such Criminal jurisdiction as may now be exercised by the said High Court as a Court of a Admiralty, or of Vicé-Admiralty or otherwise in connection with maritime matters, or matters of prize.

Testamentary and Intestate Jurisdiction.

34. [Testamentary and intestate jurisdiction].—And We do further ordain that the said High Court, of Judicature at *Madras* shall have the like power and authority as that which may now be lawfully exercised by the said High Court, in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits, and all other effects whatsoever of persons dying intestate, whether within or without the Presidency of *Madras* : Provided always, that nothing in these Letters Patent contained shall interfere with the provisions of any law which has been made by competent legislative authority for *India*, by which power is given to any other Court to grant such probates and letters of administration.

Matrimonial Jurisdiction.

35. [Matrimonial Jurisdiction].—And We do further ordain that the said High Court of Judicature at *Madras* shall have jurisdiction, within the Presidency of *Madras*, in matters matrimonial—

al between Our subjects professing the Christian religion: Provided always, that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court not established by Royal Charter within the said Presidency lawfully possessed thereof.

Powers of Single Judges and Division Courts.

36. [Single Judges and Division Courts.]—And We do hereby declare, that any function which is hereby directed to be performed by the said High Court of Judicature at *Madras*, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose, under the provisions of the Thirteenth of the Section aforesaid Act of the Twenty-fourth and Twenty-fifth years of Our Reign; and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges if there shall be a majority, but if the Judges should be equally divided, then the opinion of the senior Judge shall prevail.

Civil Procedure.

37. [Regulation of proceedings.]—And We do further ordain that it shall be lawful for the said High Court of Judicature at *Madras* from time to time to make rules and orders for the purpose of regulating all proceedings in civil cases which may be brought before the said High Court, including proceedings in its admi-

ralty, vice-admiralty, testamentary, intestate and matrimonial jurisdiction respectively : Provided always, that the said High Court shall be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor-General in Council, and being Act No. VIII of 1859, and the provisions of any law which has been made, amending or altering the same, by competent legislative authority for *India*.

Criminal Procedure.

38. [Regulation of proceedings.]—And We do further ordain that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature at *Madras*, in the exercise of its ordinary original Criminal jurisdiction, and also in all other criminal cases over which the said High Court had jurisdiction immediately before the publication of these presents, shall be regulated by the procedure and practice which was in use in the said High Court immediately before such publication, subject to any law which has been or may be made in relation thereto by competent legislative authority for *India* ; and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General in Council, and being Act No. XXV of 1861, or by such further or other laws in relation to criminal procedure as may have been or may be made by such authority as aforesaid.

Appeals to Privy Council.

39. [Power to appeal.]—And We do further ordain that any person or persons may appeal to

Us, Our heirs and successors, in our^r or their Privy Council, in any matter not being of Criminal jurisdiction, from any final judgment, decree, or order of the said High Court of Judicature at *Madras* made on appeal, and from any final judgment, decree, or order made in the exercise of original jurisdiction by Judges of the said High Court, or of any Division Court, from which an appeal shall not lie to the said High Court under the provision contained in the 15th clause of these Presents: Provided, in either case, that the sum or matter at issue is of the amount or value of not less than 10,000 rupees, or that such judgment, decree, or order shall involve, directly or indirectly, some claim, demand or question to or respecting property amounting to or of the value of not less than 10,000 rupees; or from any other final judgment, decree or order made either on appeal or otherwise as aforesaid, when the said High Court shall declare that the case is a fit one for appeal to Us, Our heirs or successors, in Our or their Privy Council; Subject always to such rules and orders as are now in force, or may from time to time be made, respecting appeals to Ourselves in Council; from the Courts of the said Presidency. Except so far as the said existing rules and orders respectively are hereby varied, and subject also to such further rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

40. [Appeal from interlocutory judgments.]
—And We do further ordain that it shall be lawful for the said High Court of Judicature at *Madras*, at its discretion, on the motion, or if the said

High Court be not sitting, then for any Judge of the said High Court, upon the petition of any party who considers himself aggrieved by any preliminary or interlocutory judgment, decree, order, or sentence of the said High Court, in any such proceeding as aforesaid, not being of Criminal Jurisdiction, to grant permission to such party to appeal against the same to Us, Our heirs and successors, in Our or their Privy Council, subject to the same rules, regulations, and limitations as are herein expressed, respecting appeals from final judgments, decrees, orders and sentences.

41. [Appeal in Criminal cases, &c.]—And We do further ordain that from any judgment, order, or sentence of the said High Court of Judicature at *Madras*, made in the exercise of original Criminal jurisdiction, or in any criminal case where any point or points of law have been reserved for the opinion of the said High Court in manner hereinbefore provided, by any Court which has exercised original jurisdiction, it shall be lawful for the person aggrieved by such judgment, order, or sentence to appeal to Us, Our heirs or successors, in Council, provided the said High Court shall declare that the case is a fit one for such appeal, and under such conditions as the said High Court may establish or require, subject always to such rules and orders as We may, with the advice of Our Privy Council, hereafter make in that behalf.

42. Rule as to transmission of copies of evidence and other documents.—And We do further ordain that, in all cases of appeal made from any judgment, order, sentence, or decree

of the said High Court of Judicature at *Madras* to Us, Our heirs or successors, in Our or their Privy Council, such High Court shall certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a true and correct copy of all evidence, proceedings, judgments, decrees, and orders had or made in such cases appealed, so far as the same have relation to the matters of appeal, such copies to be certified under the seal of the said High Court. And that the said High Court shall also certify and transmit to Us, Our heirs and successors, in Our or their Privy Council, a copy of the reasons given by the Judges of such Court, or by any of such Judges, for or against the judgment or determination appealed against. And We, do further ordain that the said High Court shall, in all cases of appeal to Us, Our heirs or successors, conform to and execute, or cause to be executed, such judgments and orders as We Our heirs, or successors, in Our or their Privy Council, shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal orders, or other order or rule of the said High Court, should or might have been executed.

Calls for Records &c, by the Government,

43. [High Court to comply with requisition from Government for records, &c.]—And it is our further will and pleasure that the said High Court of Judicature at *Madras* shall comply with such requisitions as may be made by the Government for records, returns, and statements, in such form and manner as such Government may deem proper.

44. [Powers of Indian Legislature preserved.]—And We do further ordain and declare that all the provisions of these Our Letters Patent are subject to the legislative powers of the Governor-General in Council, exercised at meetings for the purpose of making laws and regulations, and also of the Governor-General in cases of emergency under the provisions of an Act of the Twenty-fourth and Twenty-fifth Years of Our Reign, chapter sixty-seven, and may be in all respects amended and altered thereby.

45. [Provisions of former Letters Patent inconsistent with these Letters Patent, to be void.]—And it is Our further will and pleasure that these Letters Patent should be published by the Governor in Council, and shall come into operation from and after the date of such publication; and that from and after the date on which effect shall have been given to them, so much of the aforesaid Letters Patent granted by His Majesty King *George* the Third as was not revoked or determined by the said Letters Patent of the twenty-sixth of *June* One thousand eight hundred and sixty-two, and is inconsistent with these Letters Patent, shall cease, determine, and be utterly void, to all intents and purposes whatsoever.

[In witness, &c.]—In witness whereof, We have caused these Our Letters to be made Patent. Witness Ourselves, at Westminster, the Twenty-eighth day of December in the Twenty-ninth year of Our Reign.

By warrant under the Queen's Sign Manual.

C. ROMILLY.

THE INDIAN HIGH COURTS ACT.

24 & 25 VIC., CAP. 104.

*(As amended by 28 and 29 Vic., C., 15, 41
and 42 Vic., C. 79, 55 and 56 Vic.,
C. 19, 56 and 57 Vic., C. 14.)*

AN ACT FOR ESTABLISHING HIGH COURTS OF JUDICATURE IN INDIA.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. [*Repealed by 55 and 56 Vic. c. 19.*]

2. **Consitution of High Courts.**—The High Court of Judicature at Fort William in Bengal, and at the Presidencies of Madras and Bombay respectively, shall consist of a Chief Justice and as many Judges not exceeding fifteen, as Her Majesty may, from time to time, think fit to appoint, who shall be selected from—

1st—Barristers of not less than five years' standing; or

2nd—Members of the Covenanted Civil Service of not less than ten years' standing, and who shall have served as Zilla Judge, or shall have exercised the like powers as those of a Zilla Judge for at least three years of that period; or,

3rd—Persons who have held Judicial office not inferior to that of Principal Sadr Amin or Judge of the Small Cause Court for a period of not less than five years; or,

4th—Persons who have been Pleaders of a Sadr Court or High Court for a period of not less than

ten years, if such Pleaders of a Sadr Court shall have been admitted as Pleaders of a High Court :

Provided that not less than one-third of the Judges of such High Courts respectively, including the Chief Justice, shall be Barristers, and not less than one-third shall be Members of the Covenanted Civil Service.

3. [*Repealed by 41 and 42 Vic., c. 79.*]

4. **Tenure of office of Judges, and resignation.**—All the Judges of the High Courts established under this Act shall hold their offices during Her Majesty's pleasure: Provided that it shall be lawful for any Judge of a High Court to resign such office of Judge to the Governor-General of India in Council or Governor in Council of the Presidency in which such High Court is established.

5. **Precedence of Judges of High Courts.**—The Chief Justice of any such High Court shall have rank and precedence before the other Judges of the same Court, [* * *]¹ and, except as aforesaid, all the Judges of each High Court shall have rank and precedence according to the seniority of their appointments, unless otherwise provided in their Patents.

6. **Salaries, &c., of Judges of High Court.**—[* * *] It shall be lawful for the Secretary of State in Council of India to fix the salaries, allowances, furloughs, retiring pensions, and (where necessary) expenses for equipment and voyage of the Chief Justices and Judges of the several High Courts under this Act, and from time to time to alter the same: Provided always

that such alteration shall not affect the salary of any Judge appointed prior to the date thereof.

7. Provision for vacancy of the office of Chief Justice or other Judge.—Upon the happening of a vacancy in the office of Chief Justice, and during any absence of a Chief Justice, the Governor-General in Council, or Governor in Council, as the case may be, shall appoint one of the Judges of the same High Court to perform the duties of Chief Justice of the said Court until some person has been appointed by Her Majesty to the office of Chief Justice, of the same Court, and has entered on the discharge of the duties of such office, or until the Chief Justice has returned from such absence, and upon the happening of a vacancy in the office of any other Judge of any such High Court, and during any absence of any such Judge, or on the appointment of any such Judge to act as Chief Justice it shall be lawful for the Governor-General in Council, or Governor in Council, as the case may be, to appoint a person, with such qualifications as are required in persons to be appointed to the High Court, to act as a Judge of the said High Court, and the person so appointed shall be authorized to sit and to perform the duties of a Judge of the said Court until some person has been appointed by Her Majesty to the office of Judge of the same Court, and has entered on the discharge of the duties of such office, or until the absent Judge has returned from such absence, or until the Governor-General in Council or Governor in Council, as aforesaid, shall see cause to cancel the appointment of such acting Judge.

8.

And the records and documents of the several Courts so abolished in each Presidency shall become the records and documents of the High Court established in the same Presidency.

9. Jurisdiction and powers of High Courts.

—Each of the High Courts to be established under this Act shall have and exercise all such Civil, Criminal, admiralty and vice-admiralty, testamentary, intestate, and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to the administration of justice in the Presidency for which it is established, as Her Majesty may, by such Letters Patent, as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of Original Civil and Criminal Jurisdiction beyond the limits of the Presidency-town as may be prescribed thereby; and, save as by such Letters Patent as may be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any matter vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts.

10. [*Repealed by 28 Vic., c. 15*]

11. Existing provisions applicable to Supreme Courts to apply to High Courts.—Upon the establishment of the said High Courts in the said

¹ The first three paragraphs of this Section were repealed by 55 and 56 Vic., c. 19.

Presidencies respectively, all provisions then in force in India of Acts of Parliament, or of any Orders of Her Majesty in Council, or Charters, or of any Acts of the Legislature of India, which at the time or respective times of the establishment of such High Courts are respectively applicable to the Supreme Courts at Fort William in Bengal, Madras, and Bombay respectively, or to the Judges of those Courts, shall be taken to be applicable to the said High Courts and to the Judges thereof respectively, so far as may be consistent with the provisions of this Act and the Letters Patent to be issued in pursuance thereof, and subject to the legislative powers in relation to the matters aforesaid of the Governor-General of India in Council.

12. Provision as to pending proceedings in abolished Courts.—From and after the abolition of the Courts abolished as aforesaid in any of the said Presidencies, the High Court of the same Presidency shall have jurisdiction over all proceedings pending in such abolished Courts at the time of the abolition thereof, and such proceedings and all previous proceedings in the said last-mentioned Courts shall be dealt with as if the same had been had in the said High Court, save that any such proceedings may be continued as nearly as circumstances permit, under and according to the practice of the abolished Courts respectively.

13. Power to High Courts to provide for exercise of jurisdiction by single Judges or Division Courts.—Subject to any laws or regulations which may be made by the Governor-General in Council, the High Courts established in

any Presidency under this Act may, by its own rules, provide for the exercise, by one or more Judges, or by Division Courts constituted by two or more Judges of the said High Court, of the original and appellate jurisdiction vested in such Court in such manner as may appear to such Court to be convenient for the due administration of justice.

14. Chief Justice to determine what Judges shall sit alone or in the Division Courts.—The Chief Justice of each High Court shall, from time to time, determine what Judge in each case shall sit alone, and what Judges of the Court, whether with or without the Chief Justice, shall constitute the several Division Courts as aforesaid.

15. High Courts to superintend and to frame rules of practice for Subordinate Courts.—Each of the High Courts established under this Act shall have superintendence over all Courts which may be subject to its appellate jurisdiction, and shall have power to call for returns and to direct the transfer of any suit or appeal from any such Court to any other Court of equal or superior jurisdiction, and shall have power to make and issue general rules for regulating the practice and proceedings of such Courts, and also to prescribe forms for every proceeding in the said Courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and also to settle tables of fees to be allowed to the Sheriff, Attorneys, and all Clerks and Officers of Courts, and from time to time to alter any such rule or form or table, and the rules so made, and the forms so framed, and the tables so settled, shall be used

and observed in the said Courts : Provided that such general rules and forms and tables be not inconsistent with the provisions of any law in force, and shall, before they are issued have received the sanction, in the Presidency of Fort William, of the Governor-General in Council, and, in Madras or Bombay, of the Governor in Council of the respective Presidencies.

16. Her Majesty 'may establish a High Court in and for any portion of the territories within Her Majesty's dominions in India not included within the limits of the local jurisdiction of another High Court.—It shall be lawful for Her Majesty, if at any time hereafter Her Majesty see fit so to do, by Letters Patent under the Great Seal of the United Kingdom, to erect and establish a High Court of Judicature in and for any portion of the territories within Her Majesty's dominions in India, not included within the limits of the local jurisdiction of another High Court, to consist of a Chief Justice and of such number of other Judges with such qualifications as are required in persons to be appointed to the High Courts established at the Presidencies hereinbefore mentioned, as Her Majesty, from time to time, may think fit to appoint ; and it shall be lawful for Her Majesty, by such Letters Patent, to confer on such Court any such jurisdiction, powers, and authority as under this Act is authorized to be conferred on, or will become vested in, the High Court to be established in any Presidency hereinbefore mentioned; and subject to the directions of such Letters Patent, all the provisions of this Act, having reference to the High Court established in any such Presidency, and to the Chief Justice and

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other Judges of such Court, and to the Governor-General or Governor of the Presidency in which such High Court is established, shall, as far as circumstances may permit, be applicable to the High Court established in the said territories, and to the Chief Justice and other Judges, thereof, and to the person administering the government of the said territories.

17. Other or supplemental Charters may be granted within three years after the establishment of any High Court.—[It shall be lawful for Her Majesty, if Her Majesty shall so think fit, at any time within three years after the establishment of any High Court under this Act, by Her Letters Patent, to revoke all or such parts or provisions as Her Majesty may think fit of the Letters Patent by which such Court was established, and to grant and make such other powers and provisions as Her Majesty may think fit, and as might have been granted or made by such first Letters Patent, or without any such revocation as aforesaid, by like Letters Patent, to grant and make any additional or supplementary powers and provisions which might have been granted or made in the first instance.]¹

18. [*Repealed by 28 Vic., c. 15.*]

19. Interpretation of terms.—The word “Barrister” in this Act shall be deemed to include Barristers of England or Ireland or Members of the Faculty of Advocates in Scotland; and the words “Governor-General” and “Governor” shall comprehend the officer administering the Government.

¹ Section 17 has been repealed as to the United Kingdom by 56 and 57 Vic., c. 14, and in India has become spent and therefore obsolete.

THE MADRAS CIVIL COURTS ACT

BEING

ACT No. III OF 1873.

PASSED ON THE 21ST JANUARY 1873.

An Act to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court.

Preamble.—WHEREAS it is expedient to consolidate and amend the law relating to the Civil Courts of the Madras Presidency subordinate to the High Court; it is hereby enacted as follows :

PART I.—PRELIMINARY.

1. Short title.—This act may be called “The Madras Civil Courts Act, 1873:”

Local extent.—It extends to all the territories for the time being under the Government of the Governor of Fort St. George in Council, except the Tracts respectively under the jurisdiction of the Agents for Ganjam and Vizagapatam ;

Commencement.—And it shall come into force on the first day of March 1873. . .

2. [*Repealed by Act XII of 1873.*]

PART II.—ESTABLISHMENT AND CONSTITUTION OF CIVIL COURTS.

3. Number of District Courts.—The number of District (heretofore designated Zillah) Courts to be established or continued under this Act shall be fixed, and may from time to time be altered, by the Local Government :

Proviso.—Provided that no increase to the number of such Courts shall be made by such Government without the previous sanction of the Governor-General in Council.

4. Sub-Judges and District Munsiffs.—The number of Subordinate Judges and District Munsiffs to be appointed under this Act for each District shall be fixed, and may from time to time be altered, by the Local Government :

Proviso.—Provided that no addition to the number of such officers shall be made by such Government without the previous sanction of the Governor-General in Council.

5. Place at which Court to be fixed.—The place at which any Court under this Act shall be held may be fixed, and may, from time to time, be altered—in the case of a District Court or a Subordinate Judge's Court—by the Local Government ;

in the case of a District Munsif's Court—by the High Court.

The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court.*

* This paragraph has been added by Act XXI of 1885.

6. Appointment of Judge &c.—Whenever the office of the Judge of a District Court (hereinafter called a ‘District Judge’) or of a Subordinate Judge under this Act is vacant,

or whenever the Governor-General in Council has sanctioned an addition to the number of District Judges or Subordinate Judges under the provisions of Section three or Section four,

the Local Government shall appoint to the office such duly qualified person as it thinks proper.

7. Appointment of Munsiffs.—Whenever the office of a District Munsif under this Act is vacant,

or whenever the Governor-General in Council has sanctioned an addition to the number of District Munsifs under the provisions of Section four,

the High Court shall appoint to the office such person as it thinks fit :

Proviso.—Provided that he possesses the qualifications for the time being required by the rules in this behalf which the High Court, with the previous sanction of the Local Government, are hereby empowered to make and alter.

Every appointment made under this section shall be published in the same manner as appointments made by the Local Government.

The Local Government may, for good and sufficient reason, annul any appointment made under this section. •

8. Present Courts.—The present Zillah Courts, Principal Sadr Amins, and District Mun-

sifs, shall be respectively the first "District Courts," "Subordinate Judges," and "District Munsifs" under this Act.

9. Seal of Court.—Every Court under this Act shall use a seal of such form and dimensions as are, for the time being, prescribed by the Local Government.

PART III.—JURISDICTION.

10. Limits of jurisdiction.—The Local Government shall fix, and may from time to time vary, the local limits of the jurisdiction of any District Judge or Subordinate Judge under this Act:

Proviso.—Provided that, where more than one Subordinate Judge is appointed to any district, the District Judge may assign to each such Subordinate Judge the local limits of his particular jurisdiction within such district.

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to have been fixed under this Act.

11. Alteration of jurisdiction.—The High Court shall fix, and may from time to time modify, the local jurisdiction of District Munsifs.

If the High Court assigns the same local jurisdiction to two or more District Munsifs, it shall declare which of them shall be deemed to be the Principal District Munsif, and the other or others shall be called Additional District Munsifs, and shall take cognizance only of such suits and applications as may, by special or general

order in this behalf, be directed by the District

12. Jurisdiction of District Judge.—The jurisdiction of a District Judge or a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a civil nature.

Jurisdiction of Munsiff.—The jurisdiction of a District Munsif extends to all like suits and proceedings not otherwise exempted from his cognizance, of which the amount or value of the subject-matter does not exceed two thousand five hundred Rupees.

13. Appeals.—Regular or special appeals shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court.

Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court, except when the amount or value of the subject-matter of the suit exceeds Rupees five thousand, in which case the appeal shall lie to the High Court :

Provided that, whenever a Subordinate Judge's Court is established in any district at a place remote from the station of the District Court, the High Court may, with the previous sanction of the Local Government, direct that appeals from the decrees or orders of District Munsifs within the local limits of the jurisdiction of such Su-

* This paragraph has been added by Act XXI, of 1885, sec. 11.

ordinate Judge be preferred in the Court of the latter :

Provided also that the District Judge may remove to his own Court, from time to time, appeals so preferred, and dispose of them himself, or may, subject to the orders of the High Court, refer any appeals from the decrees and orders of District Munsif's preferred in the District Court, to any Subordinate Judge, within the District.*

14. Valuation of suits for immoveable property.—When the subject-matter of any suit or proceeding is land, a house, or a garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court-fees' Act, 1870, section 7, clause 5.†

15. Oath, &c.—Every Court under this Act may require a witness or party to any suit or other proceeding pending in such Court to make such oath or affirmation as is prescribed by the law for the time being in force.

16. Rule of decision.—Where, in any suit or proceeding, it is necessary for any Court under this Act to decide any question regarding succession, inheritance, marriage, or caste, or any religious usage or institution,

* In sec. 13, certain words, repealed by Act XII, of 1891, (Repealing and Amending Act), have here been omitted.

† Sec. 6 of the Suits Valuation Act (VII of 1887) runs as follows : " On and from the date on which rules under sec. 3 take effect in any part of the territories under the administration of the Governor of Fort St. George in Council to which the Madras Civil Courts Act, 1873, extends, sec. 14 of that Act shall be repealed as regards that part of those territories."

(a) the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, or

(b) any custom (if such there be), having the force of law, and governing the parties or property concerned,

shall form the rule of decision, unless such law or custom has, by legislative enactment, been altered or abolished.

(c) In cases where no specific rule exists, the Court shall act according to justice, equity, and good conscience.

17. What suits Judges cannot try.—No District Judge, Subordinate Judge, or District Munsif, shall try any suit to or in which he is a party or personally interested, or shall adjudicate upon any proceeding connected with, or arising out of, such suit.

No District Judge or Subordinate Judge shall try any Appeal against a decree or order passed by himself in another capacity.

When any such suit, proceeding, or appeal, comes before any such officer, he shall report the circumstances to the Court to which he is immediately subordinate.

The superior Court shall thereupon dispose of the case in the manner prescribed by the Code of Civil Procedure, section 6.

Nothing in the last preceding clause of this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

PART IV.—MISCONDUCT OF JUDGES.

18. Suspension and removal of District Judge, &c.—Any District Judge, Subordinate Judge, or District Munsiff, may, for any misconduct, be suspended or removed by the Local Government.

19. Suspension, &c., by High Court.—The High Court may, whenever it sees urgent necessity for so doing, suspend a Subordinate Judge pending the orders of the Local Government.

The High Court shall immediately report the circumstances of such suspension,

and the Local Government shall make such order thereon as it thinks fit.

20. Commission.—The High Court may suspend any District Munsiff who is alleged to have misconducted himself, or may appoint a Commission for enquiring into his alleged misconduct.

The provisions of Act No. XXXVII of 1850 (*for regulating enquiries into the behaviour of public servants*) shall apply to enquiries under this Section, the powers conferred by that Act on the Government being exercised by the High Court.

On receiving the report of the result of any such enquiry, the High Court may, if it think fit, remove the Munsiff from office, or suspend him, or reduce him to a lower grade.

21. Suspension.—The District Judge may suspend from office, whenever he sees urgent necessity for so doing, any District Munsiff under his control.

Whenever a District Judge exercises the power conferred by this section, he shall forthwith send to the High Court a full report of the circumstances of the case, together with the evidence, if any, and the High Court shall make such order thereon as it thinks fit.

PART V.—MINISTERIAL OFFICERS.

22. Ministerial officers.—The ministerial Officers of the District Courts shall be appointed, and may be suspended or removed, by the Judges of such Courts, whose orders in such matters shall be final, “subject to the control of the High Court.”*

23.† Suspension &c., of ministerial officer.—The ministerial Officers of the Courts of the Subordinate Judges and District Munsiffs, shall be appointed by such Subordinate Judges and District Munsiffs respectively, subject to the approval or confirmation of the District Judge within whose jurisdiction such Courts are situate, may, “subject to the control of the High Court,”* be suspended or removed from office either by the said District Judge or (subject to his approval or confirmation) by such Subordinate Judges and District Munsiffs respectively.

24. Rules by Local Government.—Every appointment under this Part shall be made subject to such rules as the Local Government from time to time prescribes on this behalf.

* The words quoted in secs. 22 and 23 have been added by Act XXI of 1895.

† Sec. 23 has been substituted by Act XIX of 1877.

Every person appointed under this Part shall perform such duties as may from time to time be imposed upon him by the presiding officer of the Court to which he belongs.

The present Ministerial Officers of the Courts under this Act shall be deemed to have been appointed under this Part.

24A.* Transfer of ministerial officers.—The Local Government may, at the instance of the District Judge, transfer from any Court, except the High Court, to any other Court, except the High Court, all or any of the ministerial officers of the Court of such Judge, or of any Subordinate Judge, or District Munsiff under his control.

The District Judge may transfer all or any of the ministerial officers of any Court under his control to any other such Court.

PART VI.—MISCELLANEOUS.

25. Procedure on death &c., of Judge.—In the event of the death of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the station in which his Court is held, the senior Subordinate Judge of the District shall, without interruption to his ordinary duties, assume charge of the District Judge's office, and shall discharge such of the current duties thereof as are connected with

* Sec. 24A has been added by Act XIX of 1877.

the filing of suits and appeals, the execution of processes, and the like, and shall continue in charge of the office until the same is resumed or assumed by an officer duly appointed thereto.

26. Procedure on death &c, of Munsiff.—The District Judge, on the occurrence within his District of any vacancy in the office of District Munsif, may, pending the orders of the High Court thereon, appoint such person as he thinks fit to act in such office; and he shall at once report to the High Court the occurrence of every such vacancy and such appointment.

27. General control.—Subject to the other provisions of this Act and to the rules for the time being in force and prescribed by the High Court in this behalf, the general control over all the Civil Courts under this Act in any District is vested in the District Judge.

28. Powers of Small Causes.—The Local Government may, by notification in the official *Gazette*, invest, within such local limits as it shall from time to time appoint, any “district or”* Subordinate Judge with the jurisdiction of a Judge of a Court of Small Causes for the trial of suits cognizable by such Courts up to the amount of rupees five hundred, and any District Munsif with the same jurisdiction up to the amount of rupees fifty, “or on the recommendation of the High Court up to any amount not exceeding Rupees two hundred,”* and may,

* In sec. 28 the words quoted have been added by Act XXI of 1885.

by like notification, whenever it thinks fit, withdraw such jurisdiction from the " District or " * Subordinate Judge or Munsif so invested.

29. [*Para. 1 has been repealed by Act IX of 1887, and paras. 2 and 3 by Act XII of 1891.*]

But, save as provided in this section, nothing herein contained shall be deemed to affect the said Madras Act.

30. Adjournment.—The High Court may permit the Civil Courts under its control to adjourn from time to time for periods not exceeding in the aggregate two months in each year.

* In sec. 28 the words quoted have been added by Act XXI of 1885.

THE
MADRAS CITY CIVIL COURT ACT

BEING

ACT No. VII OF 1892.

PASSED ON THE 12TH AUGUST 1892.

*An Act to establish an additional Civil Court
for the City of Madras.*

WHEREAS it is expedient to establish an additional Civil Court for the City of Madras ; It is hereby enacted as follows :—

1. Title and Commencement.—(1) This Act may be called the Madras City Civil Court Act, 1892 ; and

(2) It shall come into force at once.

2. Definitions.—In this Act, unless there is something repugnant in the subject or context,—

(1) “ City Court ” means the Court established under the next following section :

(2) “ City of Madras ” means the area within the local limits for the time being of the ordinary original civil jurisdiction of the High Court :

(3) “ High Court ” means the High Court of Judicature at Madras : and

(4) “ Small Cause Court ” means the Court of Small Causes of Madras.

3. Constitution of the City Court.—The Local Government may, by notification in the official Gazette, establish a Court, to be called the Madras City Civil Court, with jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature not exceeding two thousand five hundred rupees in value and arising within the City of Madras, except suits or proceedings which are cognizable—

- (a) by the High Court as a Court of Admiralty or Vice-Admiralty, or as a Colonial Court of Admiralty, or as a Court having testamentary, intestate or matrimonial jurisdiction, or
- (b) by the Court for the relief of insolvent debtors, or
- (c) by the Small Cause Court.

4. Appointment, suspension and removal of Judges.—The Local Government may, by notification in the official Gazette, appoint so many persons as it may think fit to be Judges of the City Court; and may, for any misconduct, by a like notification, suspend or remove any Judge so appointed.

5. Judge of City Court to be Judge of Small Cause Court.—(1) Every person appointed a Judge of the City Court shall be, by virtue of his office, a Judge of the Small Cause Court with respect to cases cognizable by that Court.

(2) Every such Judge shall be liable to perform any duties of a Judge of the Small Cause Court which the Chief Justice of the High Court may require him to perform.

6. Powers of Judges when City Court consists of more than one Judge.—When the City Court consists of more than one Judge,—

- (a) each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;
- (b) the Local Government may appoint any one of the Judges to be the principal Judge; and

- (c) the principal Judge may, from time to time, make such arrangements as he may think fit for the distribution of the business of the Court among the various Judges thereof.

7. Appointment, powers, duties and punishment of ministerial officers.—(1) The Judge of the City Court, or, when the Court consists of more than one Judge, the principal Judge, may, from time to time, with the sanction of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

(2) The officers so appointed shall exercise such powers and discharge such duties of a ministerial nature as the said Judge or principal Judge may from time to time direct.

(3) The said Judge or principal Judge may, subject to the control of the High Court,—

(a) suspend or remove any officer so appointed, or

(b) fine any such officer who is guilty of misconduct or neglect in the performance of the duties of his office.

(4) Any fine imposed on an officer under subsection (3) may be deducted from his salary.

8. Questions arising in suits, &c., under Act to be dealt with according to law administered by High Court.—All questions which arise in suits or other proceedings under this Act in the City Court shall be dealt with and deter-

mined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

9. Valuation of immoveable property for jurisdictional purposes.—When the subject-matter of any suit or other proceeding is land or a house or a garden, its value for the purposes of the jurisdiction conferred on the City Court by this Act shall, subject to the other provisions of this Act, be fixed in manner provided by the Court-fees Act, 1870, (VII of 1879), section 7, clause v.

10. Process-fees.—Fees chargeable for serving or executing processes issued by the City Court, or served or executed under its direction or control, shall be such as the High Court may prescribe with the approval of the Governor of Fort St. George in Council and the sanction of the Governor-General in Council.

11. Appointment of Receivers.—The powers conferred by Chapter XXXVI of the Code of Civil Procedure (XIV of 1882), on High Courts and District Courts as to the appointment of Receivers may be exercised by the City Court or any Judge thereof.

12. Amendment of Act XV of 1882, section 31.—In clause (a) of section 31 of the Presidency Small Cause Courts Act, 1882, (XV of 1882), for the words “to the High Court” the words “to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be,” shall be substituted.

13. Repayment of half fees on settlement before hearing.—Whenever any suit or proceeding in the City Court is settled by agreement of

the parties before issues have been settled or any evidence recorded, half the amount of the institution fees paid by the plaintiff shall be repaid to him by the Court.

14. Allowance for fees paid in City Court in cases removed to High Court.—When under section 13 of the Letters Patent for the High Court, dated the twenty-eighth day of December 1865, or under section 25 of the Code of Civil Procedure, (XIV of 1882), the High Court has removed for trial by itself any suit from the City Court, fees on the scale for the time being in force in the High Court as a Court of ordinary original civil jurisdiction shall be payable in that Court in respect of the suit and proceedings therein :

Provided that, in the levy of any such fees which, according to the practice of the Court, are credited to the Government, credit shall be given to the plaintiff in the suit for any fee which in the City Court he has already paid under the Court-fees Act, 1870, (VII of 1870), on the plaint.

15. Appeals.—(1) The Court authorized to hear appeals from the City Court shall be the High Court.

(2) The period of limitation for an appeal from a decree or order of the City Court shall be the same as that provided by law for an appeal from a decree or order of the High Court in the exercise of its original jurisdiction.

16. Saving of original civil jurisdiction of High Court.—Nothing in this Act contained shall affect the original civil jurisdiction of the High Court.

Provided that—

(1) if any suit or other proceeding is instituted in the High Court which, in the opinion of the Judge who tries the same (whose opinion shall be final), ought to have been instituted in the City Court, no costs shall be allowed to a successful plaintiff, and a successful defendant shall be allowed his costs as between attorney and client :

(2) in any suit or other proceeding pending at any time in the High Court, any Judge of such Court may at any stage thereof make an order transferring the same to the City Court if in his opinion such suit or proceeding is within the jurisdiction of that Court and should be tried therein :

(3) in any suit or other proceeding so transferred, the Court-fees Act, 1870, (VII of 1870), shall apply, credit being given for any fees levied in the High Court.

17. Seal to be used.—The City Court shall use a seal of such form and dimensions as may be for the time being prescribed by the Local Government.

18. Holidays and vacations.—(1) The Judge of the City Court, or, when the Court consists of more than one Judge, the principal judge,

shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

(2) Such list, when it has received such approval, shall be published in the official Gazette, and the said holidays and vacations shall be observed accordingly.

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RS. A.

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THE TOWNS NUISANCES ACT, 1889—Madras Act 3 of 1889.

THE MADRAS VILLAGE POLICE REGULATIONS—Regulations 11 of 1816 and 4 of 1821.

THE PLACES OF PUBLIC RESORT ACT 1888—Madras Act 2 of 1888.

THE CATTLE TRESPASS ACT—Act 1 of 1871.

THE CRUELTY TO ANIMALS ACT—Act 11 of 1890.

THE CATTLE-DISEASE ACT, 1866—Madras Act 2 of 1866, as amended by Madras Act, 1 of 1879.

THE INDIAN EXTRADITION ACT—Act 15 of 1903.

THE PRISONERS ACT—Act 3 of 1900, and amended by Act I of 1903.

THE INDIAN FACTORIES ACT—Act 15 of 1889.

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THE CODE OF CRIMINAL PROCEDURE—Act 5
of 1898. Revised up to 1st April 1903 :—
Secs.—1, 4—15, 28—134, 143—210, 233
—240, 252—257, 337—345, 403, 443,
464, 494—500, 509—512, 514—516,
523—525, 528—530, 551, 560 & 565.

THE INDIAN EVIDENCE ACT—Act 1 of 1872.
Revised up to 1st November 1902 :—
Secs.—1—16, 24—35, 45—55, 59—73,
101—106, 114—119, 123—126, 132—
134, 137—146 & 153—162.

THE GENERAL POLICE ACT—Act 5 of 1861.
Secs.—15, 15A, 16, 30, 30A, 31 and 32.

THE MADRAS DISTRICT POLICE ACT.—Act 24
of 1859 and Madras Act 5 of 1865.

THE POLICE ACT—Act 3 of 1888.

THE TOWNS NUISANCES ACT—Act 3 of 1889.

THE VILLAGE POLICE ACTS—Regulations
11 of 1816 and 4 of 1821.

THE PLACES OF PUBLIC RESORT ACT—
Madras Act 2 of 1888.

THE CATTLE TRESPASS ACT—Act 1 of 1871.

THE MADRAS CITY POLICE ACT, 1888—
Madras Act 3 of 1888, as amended by
Madras Act 3 of 1898.

THE MADRAS PORTS POLICE ACT, 1881—
Madras Act 1 of 1881.

THE CORONERS MADRAS ACT—Act
1889.

**THE CRUELTY TO ANIMALS ACT, 1890—Act
11 of 1890.**

**THE CATTLE-DISEASE ACT, 1866—Madras
Act 2 of 1866, as amended by Madras
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